

Neutral Citation No. [2016] NIMaster 2

Ref:

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

Delivered: 3/3/16

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

D

Petitioner;

and

D

Respondent.

(Valuation Hearing)

Master Bell

[1] In this ancillary relief case the value of the principal matrimonial asset, a property located on the Ballyknock Road, Hillsborough could not be agreed between the parties. The husband asks that it be valued at £250,000. The wife asks that it be valued at £325,000.

[2] This judgment has been anonymised as the parties have a child who is still a minor. The parties are requested to inform the Matrimonial Office in writing within two weeks as to whether there is any reason why the judgment should not be published on the Court Service website in the normal way or as to whether it requires any further anonymisation prior to publication.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 submitted to the Library for publication in its present form.

[3] The wife was represented by Miss Sloan and the husband was represented by Miss Walkingshaw.

[4] At the hearing on 9 December 2015 each party called one witness to give opinion evidence regarding the valuation of the property. The husband called Mr Robert Wilson from the Robert Wilson Estate Agency Group. He is a self-employed auctioneer and, although he has no formal qualifications in the field, has been valuing property for almost 30 years. He gave evidence that he has hundreds of properties within a 5 mile radius of the Ballyknock Road property on his books. The wife called Mr Jonathan Steen from Templeton Robinson as a witness. Mr Steen is a member of the National Association of Estate Agents and of the Institute of Professional Auctioneers and Valuers. He has a Diploma in Property from SERC. He is the Director of the Lisburn office of Templeton Robinson and has worked in this particular geographical area for about 17 years. He gave evidence that his firm has approximately 170 properties in the Lisburn area for sale on their books. On the basis of their experience I accepted both witnesses as expert witnesses who were entitled to give opinion evidence.

[5] Neither counsel thought it necessary to make submissions either before or after the calling of the witnesses and my task is therefore to analyse the evidence and reach a conclusion as to the valuation of the property. At the hearing neither party provided the court with photographs of the property concerned and so I asked the parties to provide photographs. This proved more difficult than might be imagined in that the parties could not for a time agree as to who would provide such photographs. Eventually, however, a set of photographs was provided.

[6] The Ballyknock property comprises a detached house. There are three reception rooms and a kitchen with a dining area. There are four bedrooms (one currently used a children's playroom), one of which is ensuite. Over the ground floor lounge there is a mezzanine area currently used as a study.

MR WILSON'S EVIDENCE

[7] Mr Wilson informed the court that in valuing a property he took into account a range of factors such as size, accommodation, setting and location. Mr Wilson gave evidence that he had valued the property on three previous occasions, the last of which was in February 2015. On each of those occasions he valued the property at £200,000. However he valued it before me at £250,000. He was happy to concede that the property market had risen considerably and many more sales were being concluded. He identified that

there was work which needed done to the Ballyknock property. The front door had an unfinished step. Entry to the front door is currently obtained by three steps of unsightly, uncemented breeze blocks. Mr Wilson considered that this unfinished entrance meant that the kerb appeal was “not terrific for a rural property”.

[8] Another factor which Mr Wilson felt would have considerable impact was that there was an agricultural right of way up the laneway to the house which led to the farmland behind it. There was no formula which could be used to assess the impact of this factor but it was a considerable drawback to a potential purchase.

[9] Mr Wilson considered that the best comparable property was 15 Ballylintagh Lane. It had been put on the market at £249,950 and agreed for sale at £245,000. A defect had then been found in the lead flashing and so the final price was £240,000. This property was a similar sized one, set on a reasonably large site. It had no comparable right of way issue to the one which existed at the Ballyknock property. In terms of location the Ballylintagh Lane property also had a Hillsborough post code and was equidistant from Hillsborough but on the other side of the village from the Ballyknock property. He said that Hillsborough village commanded a premium from purchasers, just like other areas such as Cultra. The closer a property was to Hillsborough, the higher price it was likely to achieve. The Ballylintagh Lane property had three bedrooms, although these could not be described as “good sized”. Rather they were “adequate”. They had no built in storage. The drawing room was attractive. There was a good view of the Lagan Valley towards Moira. The property was reasonably easy to heat. The brick finish on the property was good. The laneway was used for farm machinery rather than livestock.

[10] Mr Wilson had also taken into account a property at 25 Glen Road, Dromore which was on the market for £299,950. There had been interest in the property at a price of £250,000. However he recognised that there was a difference between interest in a property at a particular price and a sale of a property at the same price. He said that there can be difficulties in obtaining bank lending facilities.

[11] Mr Wilson had also taken into account a property at 37 Coachman’s Way, Hillsborough which is located in a small development. It is a 4 bedroom detached house with 3 reception rooms. It was on the market for £275,000 but Mr Wilson considered that it was priced too highly. He would value it at under £200,000.

[12] As a result of these comparators Mr Wilson said that he would place the Ballyknock property on the market at a price of £249,950. He believed that if it was placed on the market at £320,000 it would just sit.

[13] In cross examination Mr Wilson was led to compare the Ballyknock and Ballylintagh Lane properties. He suggested that the Ballyknock property had better views and it was difficult for valuers to put a value on a view. He noted that Ballylintagh was a bungalow which can have a broader appeal. Ballyknock was the newer house by about 5 years. However some people prefer a more mature garden. Ballylintagh is on a 1 acre site whereas Ballyknock is on a 2 acre site. Sometimes that is seen as an advantage and at other times it is seen as a disadvantage.

[14] Mr Wilson was then taken through a number of other comparator properties and made various observations in relation to them as to their history and their suitability as comparators.

MR STEEN'S EVIDENCE

[15] In his evidence Mr Steen described access to the Ballyknock property and how that was from the A1 dual carriageway, then onto the Ballyknock Road and then up a laneway. He hadn't known of the right of way problem concerning the Ballyknock property until the date of the hearing. So his valuation of the property lay in the region of £300,000 to £375,000. He did agree that there were presentation issues at Ballyknock. However he considered that these were not as great as Mr Wilson suggested. There was some tidying up which had to be done, particularly the breezeblocks substituting for steps at the front door. He said that a local builder could correct the front steps in a couple of days. A portion at the rear of the property also needed some work. The driveway and lane were wet and mucky and had potholes. However he considered that many properties in rural areas did not have laneways with, for example, kerbstones. However these were relatively minor defects. On the other hand the interior presentation of the Ballyknock property was good. He did not have any issues with interior presentation. Where he differed with Mr Wilson was in regard to his view of the current state of the property market and the degree of pickup that was now being experienced.

[16] When it came to using the Ballylintagh Lane property as a comparator, Mr Steen agreed with Mr Wilson that there were comparable elements in both properties. However where he differed from Mr Wilson's opinion was in

believing that the Ballyknock property had significant extras which were selling features. In particular the field and the views.

[17] In respect of Mr Wilson's use of the Glen Road property as a comparator Mr Steen noted that Glen Road had 2.3 acres of land as opposed to 2.0 at Ballyknock. However he felt that Ballyknock was more desirable because of its Hillsborough address. He considered that this was a very "post code-sensitive market". Hillsborough properties therefore attracted higher values. To him, one of the keys in valuing such properties was access to the A1. This was a major selling feature and opened up the buyers' market.

[18] Mr Steen's approach had been to provide valuations of three different ranges. Firstly to look at three properties in the £250,000 - £270,000 range. Secondly, to look at three properties in the £300,000 plus range. Thirdly, to look at three sites upon which homes could be built. I was not persuaded by him that evidence as to the value which sites might attract was helpful to me in terms of valuing the Ballyknock property. In my view there is a considerable difference between the type of purchaser who buys a site as opposed to one who purchases a house which has already been built.

[19] In respect of the lower price band Mr Steen considered a property at 55 Ballycrune Road which was on the market at £249,950 and had sold in July 2015 at £249,000. It had spectacular views. While smaller than Ballyknock, it was dated inside and the feedback from viewers was that money needed to be spent on its modernisation. Mr Steen also considered a property at 25 St James' Road, Moira. It was currently agreed for sale at £253,000. It was on a much smaller site but did have six bedrooms and had a large square footage of 3675 square feet. However it had no nice views and access was through a yard and outbuildings. Mr Steen also considered a property at 118 Halftown Road. From a marketing point of view it had been described as a Hillsborough property but it had a BT27 post code. It had now sold for £235,000 had no views, but had no land and was only 1700 square feet in size.

[20] In respect of the higher price band Mr Steen considered a property at 5 Meggarystown Road. It is on the market at £385,000 though he had suggested a price of £377,500. It is a slightly larger property than Ballyknock and has a separate double garage. It has a similar size of gardens/land to Ballyknock. He also referred to another property at Ballyknock Road which was being marketed for sale by Faloon Estate Agents at £350,000. Although he did not personally know this property, the valuation was by a recognised valuer. (I did not find this property as a useful comparator given that no evidence was, or could in the circumstances, be provided as to whether this was a price

which the estate agent recommended as an accurate valuation or simply represented an instruction from the client to have the property marketed at this price.) Mr Steen's third comparator in the higher price band was 27 Valley Road, Banbridge. This property had been on the market for £399,950 but was now agreed for sale at £380,000. It had a BT32 post code which Mr Steen did not believe was as desirable as a BT26 post code. Indeed had it been in BT26 he would have valued it at perhaps £480,000. Set in a 2.4 acre site, the property had had a huge amount of work done by a landscape gardener. It had four bedrooms, two of which were ensuite.

[21] Mr Steen agreed in cross examination that rights of way were a big issue with properties in rural areas. Although the owner of the Ballyknock property has ownership of the laneway, the farmer who owns nearby land has a right of way over the laneway. Farm machinery would be visible from the property and this could, in his view, put a potential purchaser off by an amount of £25,000.

[22] In terms of general approach Mr Steen commented that the best comparators were properties sold and properties which had been agreed for sale rather than properties which were on the market for a particular price. In terms of valuing properties, a valuation represented a combination of experience in the market and a little "gut reaction". He acknowledged that in terms of setting prices he marketed properties at prices which were a little above what he thought he could achieve. In relation to Mr Wilson's approach of having increased his valuation of Ballyknock from £200,000 to £250,000, he considered that a 25% price increase in an eight week time period was unheard of.

CONCLUSION

[23] Assessment of expert opinion evidence requires the court to consider a number of factors and accord them each an appropriate amount of weight. Issues which are often taken into account when assessing expert opinion, but which did not arise for particular consideration on this occasion, include the correctness of an expert's factual premises and underlying assumptions; the objectivity or bias of an expert; and the impact of an expert straying outside his field of expertise. The factors which merited some consideration were as follows.

[24] Firstly, the issue of the expert witnesses' qualifications and experience. Mr Wilson has less qualifications than Mr Steen as a valuer. However that does not automatically mean that his opinion should be accorded less weight.

Mr Wilson has extensive experience and has been valuing properties for some 30 years. However Miss Sloan did not seek to undermine Mr Wilson's evidence on the basis that he had fewer qualifications and so I did not conclude that Mr Wilson's opinion was to be relied upon less than Mr Steen's on this ground.

[25] Secondly, the issue of the experts' methodology. Both experts used comparators as a means of attempting to reach a conclusion as to how the Ballyknock property should be valued. Mr Wilson's approach seemed to be to identify the property which was the best comparator and then value the Ballyknock property at a similar price. Mr Steen's approach was somewhat more rigorous. He identified a number of properties in particular price bands and then effectively asked himself which price band the Ballyknock property best fitted into. I considered Mr Steen's methodology more sound as a methodology in that it was less likely to be affected by one rogue result.

[26] Thirdly, the issue of how the experts performed under cross-examination. Neither expert's evidence was particularly undermined by counsel's cross-examination. I decline therefore to give either expert's opinion more weight than the other on the basis of this particular factor.

[27] Fourthly, the issues of changes of opinion and the expert's reasoning. In *National Justice Cia Naviera SA v. Prudential Assurance Co. Ltd.* [1993] 2 Lloyd's Rep 68 (better known as the *Ikarian Reefer* decision) Cresswell J set out a number of principles in respect of the duties and responsibilities of expert witnesses. Those clearly envisage that experts may change their opinion after consideration of another point of view. Experts who change their opinions for good reason on the receipt of fresh information are to be respected rather than criticised by a court, provided, of course, that their reasons for doing so are sound. There is nothing intrinsically wrong with an expert changing their view on further reflection or on the basis of fresh information. An expert may honestly change their opinion either as a result of further research and thought or as a result of discussions with other experts. Whether such a change of view shows an admirable flexibility of thought, or a regrettable inconstancy of mind, is a matter for the court to assess. The case before me is not a case where an expert has changed his mind in the witness box after hearing another witness's evidence. It is a case where Mr Wilson had valued the property on three previous occasions, the last of which was in February 2015. On each of those occasions he valued the property at £200,000. However he valued it before me at £250,000. His explanation for his change of opinion was that the property market had risen considerably and many more sales were being concluded. Mr Steen on the other hand considered that a 25%

price increase in an eight week time period was unheard of. I had concerns with Mr Wilson's opinion based on such a significant change. It does not appear that the property market is currently in a state where it is demonstrating sharp price rises. If Mr Wilson was correct in his valuation of £250,000 before me, then it would appear likely that he was not correct in his original valuation. I have concluded that his change in opinion reduces the weight which I can place on his opinion in this case because I am not persuaded by the reasoning which underpins his opinion.

[28] Taking all these factors into consideration, and having examined the brochures in relation to the comparator properties and having viewed the photographs, I do not consider it is appropriate to place the Ballyknock property in the £200,000 to £270,000 price band. The Ballyknock property does also not sit well within Mr Steen's higher price band when I consider it with the three comparators he provides for what he described as his "£300,000 plus" band. His description of that band must, however, be challenged. It is true that the three properties he offered as comparators were all over £300,000. However the actual price range of the properties was from £350,000 to £380,000 and so to describe it as "£300,000 plus" is not a helpful description. It would be more accurate to describe it as a £350,000 to £380,000 band.

[29] I consider therefore that an appropriate valuation for the Ballyknock property falls between the top of the £200,000 to £270,000 band and the bottom of £350,000 to £380,000 band and I value the property at £290,000.

[30] As the next date for the listing of this case is fast approaching, I am delivering this judgment today by email to the parties without requiring their attendance.