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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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IN THE MATTER OF
ROSE MARIE LAPPIN (DECEASED)

BETWEEN:

EILEEN COURTNEY

Applicant (Respondent)

and

BRENDAN LAPPIN

Respondent (Appellant)

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Bobbie-Leigh Herdman (instructed by John J Rice & Co, Solicitors) for the applicant
The respondent, Mr Lappin, appeared in person

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SCOFFIELD J

Introduction

[1] This is an appeal by Mr Brendan Lappin against an order made by Master Hardstaff, dated 4 March 2022, whereby he ordered that the appellant be removed as an executor and personal representative of the estate of his mother, Rose Marie Lappin ("the deceased" and "the testatrix"). Master Hardstaff's order also expressly prohibited Mr Lappin from extracting a grant of representation in the said estate in this jurisdiction; and granted leave to the remaining executor (Mrs Eileen Courtney, the applicant for the order appealed against and the respondent in the present appeal) to continue the administration of the deceased's estate, including leave to apply for a grant of probate of the deceased's will.

[2] Ms Herdman, who appeared for Mrs Courtney, provided helpful written submissions dealing with the relevant law and made succinct oral submissions. Mr Lappin appeared in person and represented himself. Although the content of

some of his representations was highly contentious and strongly refuted on behalf of the respondent, he made his submissions calmly, clearly and with courtesy to the court. I am grateful to each of them for their presentation of the parties' respective cases.

[3] The parties agreed that, since the appeal is a *de novo* hearing, the respondent (as the moving party below) should present her case first. I was prepared to vary the order of presentation in the event that this would have been of assistance to Mr Lappin in presenting his case; but he did not consider this necessary. Both parties also agreed that, as occurred before the Master, the case should proceed on the affidavit evidence alone, without oral testimony or cross-examination.

[4] At the commencement of the hearing, I encouraged the parties to engage with each other in order to ascertain whether some agreed compromise could be reached which accommodated both sides' concerns, perhaps by the appointment of an agreed independent personal representative. The parties took a short while to explore this but it became apparent relatively quickly that a mutually agreeable accommodation could not be reached and the court would therefore be required to adjudicate upon the application.

Factual background

[5] There is a considerable history of family acrimony in this case, of which it is necessary to provide only a brief synopsis. The testatrix who is at the centre of these proceedings is Mrs Rose Marie Lappin. She died on 14 March 2019, aged 93. The dispute between the two factions of her children who are represented in these proceedings began some time before her death.

[6] The deceased had four children. They are Eileen Courtney (the respondent); Brendan Lappin (the appellant); Teresa McAvinchey; and Niall Lappin. As noted above, Mrs Lappin was 93 years old when she died and was widowed at the time of the death, her husband having died in June 2009.

[7] By the terms of her will made on 1 September 2008, the deceased left her entire estate to her husband Patrick Joseph Lappin but, in the event that he had pre-deceased her (as indeed he had), the estate was to be divided equally between her four children as tenants in common. Both the respondent and the appellant were designated as executors.

[8] During the latter years of their mother's life, Mrs Lappin's children could not agree amongst themselves in respect of welfare decisions in relation to her. Mr Paul Dougan, solicitor, of John J Rice & Co, Solicitors, was appointed as controller ad interim in relation to Mrs Lappin by order of Master Wells on 22 April 2016. The primary purpose of this order was to make immediate provision to act on behalf of the patient in order to deal with the costs of her care and to manage her

property, but also included the power to sell the patient's interest in the dwelling house which had been the family home.

[9] The information before the court suggests that, around this time, the appellant was hoping to have his mother returned home to live with him, to be cared for by him along with his brother and his brother's wife. He was corresponding with social workers in relation to this. He also indicated an intention to make his own application to the court to be appointed controller of his mother's financial affairs. Also around this time however, Mr Lappin became critically ill and was taken into hospital. Mr Lappin's ill health seems to have persisted for several years (during which he was 'in and out of hospital') and interrupted his ability to play a meaningful role in relation to the care of his mother.

[10] Mr Dougan was later appointed controller in relation to Mrs Lappin's affairs by order of 28 February 2017 in the form of a notice of decision to appoint a controller. That order recited that there had been "voluminous correspondence" which was on the Office of Care and Protection file; that there was no agreement amongst the patient's four children in regard to her welfare, including in particular in relation to her accommodation and care arrangements; and that, having considered the best interests of the patient, the court had decided that she required a professional controller, namely a solicitor who was familiar with her assets and the issues in the case. Shortly after, Mr Dougan was appointed full controller from 29 March 2017. The relevant order in that respect directed him, *inter alia*, to close Mrs Lappin's bank accounts and lodge the closing balances in court. Significantly (for reasons which will become clear below) the controller was ordered not to "sell, assign, transfer, convey, let, licence, charge, mortgage or otherwise deal with the said property situate and known as 20 Knockamell Park, Armagh, County Armagh, BT61 7HJ without first obtaining the approval of the Master and if permitted only under such terms and conditions as the Master shall approve namely if there is a financial or other compelling reason to do so…". He was also, by virtue of the order of the court, "invested with general powers of management" in respect of the said property and authorised to keep it in good order and insure it.

[11] A key issue of contention in relation to Mrs Lappin's care is whether she should have been admitted to a care home and, once there, whether she should have remained there. Mrs Lappin was admitted to a care home in Keady in around January 2016, after she returned from hospital having broken her pelvis. There is a suggestion that this was initially due to be for two weeks only, for respite care, but that it later became permanent. It is abundantly clear from the appellant's case in these proceedings that he feels incredibly strongly that his mother was wrongly kept in the care home by his siblings against her wishes and in circumstances where she was miserable throughout her time there and begged to return to her own home. Interestingly however, Mr Lappin's own affidavit evidence also notes that Social Services refused to allow his mother home. It is this issue (although not exclusively so) which appears to have given rise to the majority of the bitterness which has plagued family relationships since. Mr Lappin has averred that, on his deathbed, his

father had asked him, his brother Niall and his sister Eileen to promise him that they would never put their mother into a home no matter what and that they all so committed. Mr Lappin's case is that Mr Dougan, in conjunction with the appellant's two sisters, wrongly kept his mother in the care home – even though this was a key issue considered in the course of the appointment of the controller. Mr Lappin also contends that Mr Dougan let her home (to which she wished to return) become uninhabitable; and that he failed to secure and/or appropriately invest her money and assets.

[12] During the course of the controllership and whilst his mother was still living in the care home, the appellant resumed residence in the family property at 20 Knockamell Park, Armagh in or around August 2018. The circumstances surrounding this are contentious. The respondent asserts that the property had been vacant and insured by the controller as a vacant property. She further asserts that the appellant moved into the property without notice to the controller and to the exclusion of the controller and both of the appellant's sisters, "having been living in Fermanagh and perhaps England for a period of time whilst recovering from serious ill-health". He set up a new electricity account for the property in his sole name and would not allow the respondent or her sister access to the property (notwithstanding that the controller had given them the task of performing the weekly inspection of the property required by the terms of the insurance for a vacant property).

[13] For his part, the appellant says that he originally moved back into the family home with his mother and father in 1992, after getting divorced from his wife, and that he has lived there ever since until becoming seriously ill in May 2016 when he was hospitalised. He says that he went home on 12 July 2016 but the house was locked up and he couldn't get in "so I went to my daughter's who cared for me whilst my life was on the line for two years", ultimately having a liver transplant in May 2018 in London. He says that in August 2018 he was then well enough to return home and did so but that, in reality, he never left the family home, otherwise than through necessity of ill-health. In short, he maintains that the family home was his permanent residence throughout, albeit that he did not live there for any significant period of time between May 2016 and August 2018.

[14] The appellant then also attempted to make claims on the house insurance policy for the property, even though this was not in his name. This arose from damage to the property which the appellant contends was not properly looked after by the controller. There was email correspondence from the claims handler indicating that the appellant was trying to make a claim on the property insurance in relation to storm damage which occurred in August 2018, though he was not named in the relevant policy; and that he was later in contact with the company seeking to progress the claim (although this was in 2019 after Mrs Lappin had passed away, at which time the appellant was purporting to act in his role as executor).

[15] The respondent and her sister went to inspect the property on 27 August 2018, as they say they had been doing regularly, and the appellant was there. They

were not able to gain admission. The respondent returned several days later but found that the locks had been changed, which gave rise to concerns that Mr Lappin was acting in further defiance of the controller's power and responsibility to manage the property.

[16] The appellant's conduct was raised with the Office of Care and Protection (OCP), culminating in an order from the Master authorising the controller (Mr Dougan) to send pre-action correspondence to Mr Lappin and, if necessary, to issue ejectment proceedings against him in order to ensure that he vacated the property. The Master clearly took the view that Mr Lappin's occupation of the house was unauthorised and inappropriate. That order was made on 14 January 2019. Mr Lappin appealed against it to the Family Division of the High Court but, in the event, the appeal became redundant because Mrs Lappin died on 14 March 2019 and the controllership ended.

[17] A heated incident then occurred on 22 March 2019. The respondent and her sister went to the property. The respondent contends that the appellant knocked her to the ground and, when her sister tried to intervene, she was pulled by the hair. Mr Lappin's version of events is very different. He contends that he was severely assaulted by his sisters. The circumstances of the immediate aftermath of Mrs Lappin's death are very sensitive and contentious; and it is clear to me that emotions still run very high, particularly on the part of Mr Lappin, in relation to that period.

[18] In any event, subsequent to Mrs Lappin's death, there was a further court order on 9 July 2019. This recorded that the controller's final account had been passed and, *inter alia*, discharged the controller and terminated the OCP proceedings in relation to Mrs Lappin.

[19] In and around summer 2019, there were also communications between Mr Dougan and a solicitor who was at that stage instructed on Mr Lappin's behalf with a view to conducting the executorship on a joint basis. A response from Mr Lappin's solicitor, Mr Hool, noted that he was willing to act as co-executor with his sister (out of respect for his mother's wishes) but "without prejudice to his absolute determination and commitment to get to the bottom of concerns that his late mother's finances have been diluted inappropriately during her lengthy period of ill health". This correspondence indicated that Mr Lappin intended to continue living in the family property in which it was said that he had resided for many years with his parents' consent; and that "he will accommodate any reasonable request to visit the property by any one of his siblings at any given time to be arranged with him on reasonable prior notice being not less than five days ahead and subject always to his business commitments". Notwithstanding the proposal to cooperate in the joint executorship, there was a dispute as to which firm of solicitors would act in the administration of the estate.

[20] The respondent's application to have the appellant removed as an executor was made by way of summons dated 22 November 2019 on the basis of the grounding affidavit of the respondent sworn on 19 November 2019. The basis for the application is outlined further below (see paras [30] and following).

[21] The appellant has a range of complaints against both Mrs Courtney and the solicitor she has instructed to administer the estate on her behalf (Mr Dougan). He is concerned that, from in and around early 2016, his sisters were spending money from their mother's bank accounts which were not transactions which she would have authorised. He has provided some evidence of cash withdrawals from her Post Office account between August 2015 and January 2016. He says that this was reported by him to the OCP and the court has seen correspondence from him which substantiates this; although he also says that his complaints to OCP were either not received by it or not dealt with adequately. He contends that the sisters were using their mother's funds for their own purposes, including servicing a loan which his sister Teresa had taken out. He says that he is determined to get the bottom of what appears to him to have been financial impropriety and financial abuse. His averment is that "*when that is sorted out* I will co-operate fully in the implementation of Mother's Will including in relation to Knockamell Park and my contribution to it" [italicised emphasis added].

[22] During the course of the proceedings before the Master, both parties were asked to provide a schedule of estimated assets and liabilities on the part of the estate. The cash assets of the estate are relatively modest and the main asset is the house in which the appellant is currently living. In his schedule of estimated assets and liabilities however, Mr Lappin indicated that his mother's estate was owed some £150,000 from John J Rice & Co and some £350,000 from his sisters. These figures, which are not particularised, appear to consist largely of sums paid to the nursing home in respect of the deceased's care during the last few years of her life which (the appellant contends) ought never to have been paid.

[23] The respondent has applied for the grant of probate but that matter is currently pending the outcome of the present appeal.

Relevant statutory provisions and legal principles

[24] The respondent's application before the Master was brought pursuant to Article 35 of the Wills and Administration Proceedings (Northern Ireland) Order 1994 ("the 1994 Order"). It provides as follows:

> "(1) Where an application relating to the estate of a deceased person is made to the High Court under this paragraph by or on behalf of a personal representative of the deceased or a beneficiary of the estate, the court may in its discretion—

(a) appoint a person (in this Article called a substituted personal representative) to act as personal representative of the deceased in place of the existing personal representative or representatives of the deceased or any of them; or

(b) if there are two or more existing personal representatives of the deceased, terminate the appointment of one or more, but not all, of those persons.

(2) Where the court appoints a person to act as a substituted personal representative of a deceased person, then—

(a) if that person is appointed to act with an executor or executors the appointment shall (except for the purpose of including him in any chain of representation) constitute him executor of the deceased as from the date of the appointment; and

(b) in any other case the appointment shall constitute that person administrator of the deceased's estate as from the date of the appointment.

(3) The court may authorise a person appointed as a substituted personal representative to charge remuneration for his services as such, on such terms (whether or not involving the submission of bills of charges for taxation by the court) as the court may think fit.

(4) In this Article "beneficiary", in relation to the estate of a deceased person, means a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate."

[25] Article 35(1)(b) is the key provision for the purpose of the respondent's application.

[26] There is a relative paucity of case-law in this jurisdiction in relation to the bases on which the court will exercise its power to remove an executor under Article 35. (It is perhaps for this reason that there is no significant discussion of the

provision in the standard text in this jurisdiction in this field – Grattan, *Succession Law in Northern Ireland* (1996, SLS)). Deeny J considered the issue in his *ex tempore* judgment in *Muckian & Another v Hoey & Others* [2014] NICh 11 (see, in particular, paras [5]-[7]). He adopted the summary provided by Lewison J in relation to the analogue provision in England and Wales in *Thomas and Agnes Carvill Foundation v Carvill & Another* [2007] EWHC 1314; [2007] 4 All ER 81, at paras [44]-[45]. I draw from each of those in the summary below. I have also found the summary in *Tristram and Coote's Probate Practice* (32nd edition, 2020, LexisNexis), at paras 41.16 to 41.18, to be of assistance.

[27] The statutory provision is in broad terms and provides the court with a discretion. The court will act on similar principles to those which apply to the removal of a trustee. A personal representative will be removed if there is positive misconduct showing that they have abused their trust; but it is not every mistake, neglect of duty or inaccuracy in their conduct which will result in such a course. The use of the power is also not limited to cases where there has been misconduct. It may be exercised where a position has been reached whereby, because of animosity and distrust between executors, the due administration of the estate cannot be achieved expeditiously. The relevant acts or omissions must be such as to endanger the estate's property, to show a want of honesty or reasonable fidelity, or a want of proper capacity to execute the duties. The discretion vested in the court is ancillary to its principal duty of seeing that the will is properly executed (or the estate properly administered) for the benefit of the beneficiaries. Friction or hostility between personal representatives (or between them and the beneficiaries) is not *of itself* a reason for the removal of a personal representative; but is a factor to be taken into account in view of the overriding consideration of the proper administration of the estate. The factors which may be taken into account by the court in the exercise of its statutory discretion are not closed. They will include the size of the estate and the likely cost of the work needed to administer it.

[28] For his part, Deeny J made this helpful observation:

> "What is indisputable, I consider, is that a misunderstanding of the role of a personal representative of an estate so that the estate is not being distributed according to law but according to some concept of fairness quite different from the law on the part of the personal representative clearly is a ground for removal of the personal representative."

[29] *Williams on Wills* (11th edition, 2021, LexisNexis), at Vol 1, para 25.17, discussing the equivalent English provision, says this:

> "The powers under [the Administration of Justice Act 1985, section 50]… can be invoked for example, where there has been excessive dilatoriness in winding up the

> estate, or there has been positive misconduct by the executor such as to endanger the trust property, or to show a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity. An executor will not be removed merely because of hostility between the executor and beneficiaries; however, hostility should be taken into account where it might obstruct the administration of the estate. In deciding whether to remove an executor, the fact that the testator has chosen him may be relevant because he will have made that choice with full knowledge of the characteristics and personalities involved."

Merits of the application

[30] Mrs Courtney's original application before the Master was advanced on two bases, namely Mr Lappin's conduct during the controllership of their late mother's affairs and his conflict of interest in either occupying (or seeking to claim an interest in) her former home. It was contended that the appellant's behaviour during the course of the controllership displayed a negative attitude towards legal process and procedure, which cast doubt on his suitability to act as an executor. In the skeleton argument submitted on her behalf, the factors relied upon are further particularised and summarised as follows:

(i) The appellant's "demonstrated lack of independence and his clear desire to serve his own needs and interests to the detriment of the other beneficiaries";

(ii) His "unwillingness to allow other beneficiaries to enter the property, which is an asset of the estate to which they have joint entitlement, even to facilitate basic maintenance";

(iii) His "conflict of interest arising from his behaviour in treating an asset of the estate as if it is a personal asset of his own"; and

(iv) His "disregard for the interests of the beneficiaries as a whole", for example by not paying rental income on the property to the estate, despite having occupied it since 2018.

[31] Ms Herdman relied strongly on the contents of a letter of 8 July 2019 from Mr Campton, the OCP Casework 2 Manager in the Office of Care and Protection Patients' Section, to Mr Dougan. In it, the following was said on behalf of Master Wells:

> "The Master would wish me to extend her thanks for all your efforts in this challenging case where the family dynamics were such that acting as Controller was always

> contentious; she is delighted you have been instructed by one of the Executors to administer the deceased's estate, and in those circumstances has directed that all proceeds held in Court will be sent to John J Rice & Co, Solicitors to hold pending the extraction of the Grant…
>
> The Master has also commented that there may be strong grounds to urgently apply to the Probate Office by way of Summons to have Brendan Lappin removed as Executor due to his conduct during the Controllership AND his conflict of interest (i.e. either occupying or seeking to claim an interest in the deceased's former home), and to seek an early Security for Costs Order against Brendan Lappin; but that will be a matter for Eileen Courtney as the other Executrix to decide.
>
> Finally the Master would wish to reassure you that if during the course of the administration of the estate you require information from the Court Controller file, she will gladly approve any such request and also will be more than happy to vouch for your actions as Controller."

[32] I consider there to be merit in the respondent's contention that the appellant's behaviour in respect of the family home gives rise to a conflict of interest by reason of which it would be inappropriate for him to act as an executor. The respondent's grounding affidavit refers to Mr Lappin's "apparent belief that the property is his and his alone". I am not persuaded that Mr Lappin takes this view. Indeed, he recognises that he is entitled only to 25% ownership of the house, which he in turn professes to be willing to surrender to his brother. More importantly though, he clearly does seem to consider that he is entitled to live in the property, which is his "own home", rent free, and to the exclusion of the other beneficiaries, in accordance with what he considers to be his parents' wishes. His skeleton argument says in relation to the house, "I certainly occupy it as my Father told me and my siblings that I could have my day in it…". In his submissions, Mr Lappin said that he should not pay rent because he never did (albeit he maintains the house). The legal position under the will is that, since his mother's death, he and his siblings are jointly entitled to the benefit of the house. There is no mention of his being granted a lifetime right to occupy it, rent-free or otherwise. This simple fact alone is sufficient in my view, in the circumstances of this case, to give rise to a conflict which is properly to be considered a bar to his acting as executor given Mr Lappin's strength of feeling on the issue and his actions on foot of his view of his entitlement.

[33] Further, I am satisfied that – although Mr Lappin is firmly convinced of the correctness of his intentions and no doubt believes that he would be acting in the best interests of his family (as he sees them) – if he continued as an executor this would be detrimental to the proper administration of the estate. That is because I

consider it clear that Mr Lappin would use his position as executor to pursue his own view as to the required recovery of moneys from his sisters and/or Mr Dougan which ought to be pursued (if at all), and properly investigated and adjudicated upon, by other means: see further para [39] below. The appellant's own skeleton argument suggests that Mr Dougan does not wish him (Mr Lappin) to be an executor on the basis that he would "make my two siblings pay back every penny they took from my Mother…". Ms Herdman described this as a "wild goose chase" on the part of Mr Lappin, to seek recoupment of some £300,000 of care home fees which were properly discharged for the care and accommodation of the deceased whilst she was still alive.

[34] I emphasise that I have not formed the view that Mr Lappin lacks any capacity (in terms of intelligence or business acumen) to administer the estate. Rather, the second basis for my conclusion that it is appropriate for him to be removed as an executor is grounded on the basis that he has a fixed (but highly contentious) view of actions that should be taken on behalf of the estate to recover monies he feels have been wrongly paid out. This fixed view on his part will, in my opinion, render him unable to dispassionately administer the estate in accordance with the obligations of an executor. Rather, he will immediately seek to pursue his own agenda, as a condition precedent to administering the estate. That would be to the detriment of the proper administration of the estate or, echoing Deeny J's sentiments, to permit the appellant to usurp the administration of the estate according to law in favour of his own concept of what was fair in the circumstances.

Merits of the appeal

[35] Although the above conclusions on the merits of the respondent's application to have the appellant removed as an executor is sufficient to dispose of the application before the court, in fairness I should also address the grounds of appeal raised in Mr Lappin's notice of appeal. These are breach of his Convention rights (under articles 6, 14 and 17); failure to order relevant discovery; and an allegation that Mr Dougan "and his two clients" owe the estate some £600,000 which they will not pay back.

[36] I do not consider the appellant to have made out his complaint that he was denied a fair hearing before the Master, in breach of his rights under article 6 of the Convention. He had an opportunity to, and did, file replying affidavit evidence in advance of the Master's determination. I was also informed that the Master heard from the parties, including Mr Lappin who represented himself, at a number of hearings. As noted above, in the appeal both parties were content to proceed on the basis of the affidavit evidence. Although Mr Lappin strongly disagrees with the outcome of the Master's consideration of the application, it does not appear to me that he was deprived of an opportunity to be heard such as to violate his rights under article 6. In any event, the issue has now been reconsidered afresh by me, sitting as a judge of the Chancery Division, in a further hearing at which Mr Lappin

appeared and made submissions, having filed a skeleton argument and a trial bundle including additional documentation upon which he wished to rely.

[37] Mr Lappin's claimed breach of article 14 ECHR is not particularised and was not developed in his submissions. I see no basis for it. article 17, which concerns the abuse of Convention rights to destroy or limit those of another, is not in my view engaged in this instance. The real issue is that Mr Lappin simply does not agree that the respondent had proper grounds for making the application to have him removed as an executor, nor the Master for granting it. I have reached the contrary conclusion.

[38] As to the refusal to order disclosure, the appellant was seeking discovery before the Master of a wide range of documentation dating back to 2009 in relation to all financial dealings in respect of his mother's bank accounts, as well as all details of benefits paid to her. Both Master Hardstaff and, more recently when she was case managing this appeal, the presiding judge in the Chancery Division (McBride J) considered that additional disclosure was unnecessary in order to fairly dispose of the application before the Court. That is particularly so because Mr Lappin has not at any stage brought his own application seeking removal of the respondent as an executor.

[39] I do not doubt the genuineness with which Mr Lappin believes that there are issues to be addressed in relation to the use of his mother's savings before (and after) her affairs were the subject of controllership. However, the respondent's application is not the proper forum for these issues to be investigated and resolved. As noted above, Mr Lappin has not brought any formal application seeking to have his sister removed as an executor. Had he done so, on the basis of the respondent's unsuitability to act as an executor, he may have had a greater prospect of arguing that an enquiry into the matters which concern him was required. More importantly, however, there are other avenues by which (subject to limitation) any such claim can be pursued or could have been pursued. Mr Lappin is free to pursue any complaints he may feel he has in relation to Mr Dougan's conduct by way of complaint to the appropriate professional body. He is also free, as he accepted, to make a complaint to the police if he considers (as he says he does) that his sisters and/or Mr Dougan have been guilty of fraud or some appropriation of funds amounting to a criminal offence. He has also been at liberty to institute free-standing civil proceedings seeking recovery of funds wrongly paid out or misappropriated. Mrs Courtney's grounding affidavit contains the following averment, which recognises that, should he wish to pursue these matters in other proceedings in which they are directly in issue, the appellant is free to do so:

> "The Defendant remains free to bring whatever proceedings that he chooses to bring against the estate, and I make no comments on the merits of that issue at this stage."

[40] Aside from the contention that his sisters wrongly appropriated funds belonging to his mother, Mr Lappin also takes strong issue with the involvement of Mr Dougan in administering the estate. He has been clear that he has no confidence in Mr Dougan's firm whatsoever. He wishes either his brother Niall to be appointed as a personal representative or that an entirely independent personal representative be appointed. Mrs Courtney considers Mr Dougan an obvious choice given his previous involvement with the family and the deceased's affairs in particular, in his prior capacity as controller. Mr Lappin has also explained in his evidence, and reiterated in his submissions, that his own relationship with John J Rice & Co (the solicitors' firm in which Mr Dougan is a partner) had irretrievably broken down some years before the issue with his mother arose, by reason of events entirely unconnected with the present dispute. It seems likely that this is also one of the reasons why he has taken issue with Mr Dougan's involvement, although it appears to be irrelevant to the present dispute.

[41] Beyond the historic animosity towards Mr Dougan's firm, Mr Lappin also relies upon alleged mismanagement of the estate during the period of the controllership. The orders made by Master Wells indicated that Mr Dougan's appointment was to be governed by Part VIII of the Mental Health (Northern Ireland) Order 1986 and Order 109 of the Rules of the Court of Judicature (Northern Ireland) 1980 (as amended). Part XII of Order 109 requires controllers to provide security for the due performance of their duties. Part XIII of Order 109 sets out detailed requirements as to the provision of accounts by controllers in relation to the administration of the patient's estate and affairs in order that they may be scrutinised and passed by the OCP. Mr Dougan was therefore required to file annual accounts with the OCP in respect of his management of the patient's property and financial affairs. Further to the order of 29 March 2017, he was required to close the patient's bank accounts and lodge the funds in court; and to account annually to the Master for all sums received or paid for and on behalf of the patient. On the death of the patient, Mr Dougan as controller was also required to account to the Master for all funds. The court has extensive powers to order a controller to pay into court any balance found due and to remedy or penalise any default on his part. The respondent contends that the Master in the OCP has reviewed and approved the controller's accounts and his management of the matter has been scrutinised and found to be without fault, so that any complaint about that period is obviously ill-founded.

[42] The statutory process, along with the (quite unusual) letter referred to at para [31] above which was sent on behalf of Master Wells who would have been intimately aware of the details of the controllership process in this case, lead me to the view, at least for present purposes and on the evidence before me, that there is unlikely to be anything of substance to the appellant's complaints about the conduct of the controllership.

Delay in appealing

[43] Mr Lappin's appeal was initiated by way of notice of appeal dated 15 March 2022, although stamped by the court office on 16 March 2022. RCJ Order 58, rule 1(3) provides:

> "Except as provided by rules 2 and 3, an appeal shall lie to a judge in chambers from any judgment, order or decision of a master, or of a district judge in the exercise of any probate jurisdiction."

[44] Rule 1(2) provides that the appeal shall be brought by serving on every other party to the proceedings in which the order or decision was given or made a notice to attend before the judge on a day specified in the notice. For present purposes, rule 1(3) is important. It provides as follows:

> "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."

[45] The respondent is correct that the notice of appeal in this case ought therefore to have been served by 9 March 2022 and has been served late. On this basis, the respondent has raised a limitation point. The principles governing the extension of time in such a scenario are broadly those set out in the well-known case of *Davis v Northern Ireland Carriers* [1979] NI 19, which focus on the duration and reasons for the delay and the merits of the application. Ms Herdman accepted that this point ought not to be dealt with as a preliminary issue since, as the court was required to consider the merits of the appeal as part of its consideration of whether time should be extended, it would make sense to hear submissions on all issues.

[46] The delay in this case was short (a period of only 6 or 7 days) and I am satisfied that no prejudice accrued to the respondent by virtue of that delay. Although Mr Lappin had not provided reasons for the delay when the respondent's skeleton argument was filed, he did so in his own skeleton argument and in his submissions to the court. Without needing to go into the details of this, Mr Lappin contends that he had a severe arthritic attack after the hearing at which the Master made the order against which he is appealing, which impacted his ability to expeditiously lodge an appeal. Although there is no independent medical verification of this, given that it is agreed that Mr Lappin has had many health difficulties over the last several years, I accept what he says about this at face value.

[47] Bearing these factors in mind, I would not have been inclined to dismiss the appeal on the basis of the delay point alone, if I felt there was any merit in the appeal. As it happens, I have reached a contrary conclusion on the merits.

Conclusion and costs

[48] For the reasons given above, I dismiss Mr Lappin's appeal and affirm the order of the Master. I extend time for the bringing of the appeal but dismiss it on its merits on the basis that the respondent has established a proper basis for Mr Lappin's removal as an executor; and he has not established any proper basis upon which I should depart from the approach adopted by Master Hardstaff, who plainly had a good grasp of the situation before him from his management of the application.

[49] I emphasise again that this is not to determine all, or indeed any, of the significant historic issues in contention between the two factions of the family, save for the limited question of whether there was and is a proper basis for the respondent's application under Article 35 of the 1994 Order.

[50] I turn, then, to the question of costs. In June 2019, although the appellant wished the administration of the estate to be carried out by the firm of solicitors instructed by him (and not Mr Dougan's firm), it was alternatively proposed that, in default of agreement, another firm could be nominated by the President of the Law Society. It seems that no agreement could be reached in this regard. As noted above (at para [4]), I also invited the parties to try to reach a pragmatic agreement on the way forward at the commencement of the hearing, and this was not possible. It is of course difficult for me to assess precisely why any such agreement was not possible but – particularly in light of Mr Lappin's repeatedly expressed position that, as a fall-back, he would accept the appointment of an independent third party to administer the estate – I consider it likely that there has been at least some degree of intransigence on both sides. That said, I do not consider Mr Lappin's concern about the appointment of another solicitor to fulfil this role to be justified (namely that any other solicitor would automatically 'side' with Mr Dougan and not administer the estate in an unbiased fashion). I also take into account that, in a modest estate such as this, the appointment of a professional accountant to administer the estate will give rise to a further layer of cost which might be thought to be unjustifiable.

[51] The core of Mr Lappin's concerns about past conduct has not been adjudicated upon, since this application is not the appropriate forum for any such enquiry. Whilst I have significant doubts about several aspects of his case, I have not had to seek to resolve these disputes in order to deal with the matter presently before the court. I accept that he is genuine in his views and concerns, even if he may ultimately be misguided. I also take into account that the respondent took a time point which was not successful.

[52] In light of these matters, in the exercise of my discretion, I do not propose to penalise Mr Lappin in costs. I therefore make no order as to costs between the parties (which was also the course adopted by Master Hardstaff). There was some

force in Ms Herdman's submission that, having unsuccessfully opposed her client's application in the court below, the appellant knowingly accepted an additional costs risk in pursuing an appeal to this court. However, for the reasons given above, I do not propose to make any costs order. I would add that any further appeal of this decision is, in my view, unlikely to attract such a benevolent approach. I will order that the respondent's costs be paid by the estate (on an indemnity basis).

[53] In *Re Loftus (deceased); Green v Gaul* [2005] EWHC 406 (Ch) – another case in which the removal of a personal representative was at issue – Mr Justice Lawrence Collins (as he then was) observed, in a comment which resonates in the present case, that:

> "Although it was famously said that every unhappy family is unhappy in its own way, in my experience there is a depressing similarity between unhappy families when it comes to disputes over the assets of deceased parents."

[54] He went on to say that the case before him was "a particularly bitter dispute, where the sums of money are modest by modern standards" but in which the two factions of the family, having been hurt, wished in turn to hurt the other. He concluded his judgment by urging both sides to engage in sensible discussions, perhaps through a mediator, in order to put an end to the unhappy dispute, with a view to ensuring that what remained of the estate was not taken up in legal costs. So too I urge the parties in this case, even at this late stage, to continue discussions, perhaps with the assistance of a mediator, with a view to seeking to resolve the issues between them in honour of their late parents.