Neutral Citation No. [2011] NIFam 18

Ref:	**WEI8347**

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

Delivered:	**25.10.2011**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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MATRIMONIAL AND PROBATE

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BETWEEN:

MARGARET ANNE McVEIGH (formerly McALEER)

Petitioner;

-and-

PATRICK JAMES McALEER

Respondent.

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WEIR J

The nature of the proceedings

[1] On 29 March 2011 the petitioner applied to the Judge to set aside the order of Master Bell made on 25 May 2010 whereby it was ordered that an ancillary relief agreement between the parties dated that day be received and made a rule of Court.

The background to the application

[2] The parties to these proceedings were married on 9 July 1980. For some time prior to 2004 the relationship seems to have been deteriorating and in that year the petitioner consulted a firm of solicitors in connection with her matrimonial affairs. From that point until May 2010 there continued a series of legal proceedings including non-molestation and occupation orders, a divorce petition and the matter with which this application is concerned, an application for ancillary relief. Ultimately, on 25 May 2010 an agreement to compromise the ancillary relief proceedings was signed by both parties in the presence of their respective legal advisors and immediately thereafter was by consent made a rule of court by Master

Bell. The terms of the agreement were not complicated, mirroring the relatively straightforward nature of the parties' affairs. In essence, they provided for the payment of the sum of £35,000 by the respondent to the petitioner, the assignment by the respondent to the petitioner of his interest in two properties, the assumption by the respondent of responsibility for a number of specified debts and in return the petitioner was to sign over to the respondent her interest in two insurance policies and in the former matrimonial home. Time limits were provided within the agreement for the taking of these various steps.

[3] In compliance with the terms of the agreement the respondent sent the £35,000 which was received by the petitioner's solicitors and also executed the various documents required of him to perfect the agreement for his part. The petitioner obtained from her solicitors £10,000 from this sum of £35,000 but did not execute the documents which the agreement obliged her to do. A long dispute then ensued between her and her solicitors in the course of which she alleged that she had been induced to enter into the agreement by the coercion of her barrister and solicitor and that they had failed to discover assets in the hands of the respondent which he had concealed in the negotiations leading to the agreement so that both she and her advisors were misled as to the true extent of the respondent's worth at the time when the agreement was signed.

[4] The respondent, having been unable to procure the petitioner's compliance with the agreement, issued a summons on 27 October 2010 for an order that the necessary documentation be executed by another person on the petitioner's behalf. When this application was initially listed before me 20 January 2011 the petitioner indicated that she was not happy with the agreement and wished to have it set aside. I gave her four weeks to make any application which she might consider proper otherwise I would proceed to make the order sought by the respondent. Ultimately the petitioner, acting in person since she has fallen out with her long-standing legal advisors, did issue the present application on 23 March 2011 and on that day I referred the matter back to Master Bell in order that he might make enquiries into the circumstances surrounding the manner in which the agreement had come into existence and been made a rule of court. Master Bell held a hearing at which he heard evidence from the petitioner and from the petitioner's former counsel and solicitor and heard submissions from both the petitioner and from Ms Robinson, counsel for the respondent. On 18 August 2011 Master Bell delivered a detailed note of his findings. His conclusion was that there was no factual much less any legal basis upon which the agreement could be set aside.

[5] Subsequent to the fact-find by Master Bell the petitioner raised further points in correspondence with the court which I also considered on the hearing of this appeal as will later appear.

The hearing before me

[6] Because the petitioner was representing herself I allowed the hearing to proceed with a degree of informality so that the petitioner could raise whatever points she considered might assist her in her application to have the consent order set aside. She called an independent financial advisor, Mr Eugene Muldoon, who gave evidence that he had been asked by the petitioner to consider the figures set out at paragraph 8 of an affidavit by the respondent of 5 February 2010 in reply to the petitioner's affidavit sworn in the ancillary relief. Mr Muldoon was clearly at something of a disadvantage because he had had no prior knowledge of the case nor had he ever had an opportunity to discuss the facts with anyone but he did make a calculation based upon figures for income tax contained in that paragraph of the respondent's affidavit which if added together might on their face suggest that the respondent had an income of £51,000 in the year in question rather than the £27,000 deposed to. However it was pointed out to the witness that these income tax amounts did not relate solely to income tax for the current year but also related to a settlement made with the Inland Revenue relating to underpaid tax in previous years and Mr Muldoon was understandably unable to comment upon that. Mr Muldoon was also asked by the petitioner to comment on a mortgage offer made to the respondent in a letter dated 2 February 2011 in which he was seeking to raise £85,000 on the security of the matrimonial home that he was to receive under the terms of the agreement. Mr Muldoon said that an offer of £85,000 must posit a minimum income of around £26,000 on the part of the respondent as Abbey routinely apply a factor of 3.25 times to an applicant's income when deciding the maximum amount of loan it is prepared to offer. Mr Muldoon readily agreed with Ms Robinson for the respondent that if his calculation were correct that figure of £26,000 would in fact fit closely with the claimed income of £27,000 contained in the respondent's affidavit as being his income in the previous year.

[7] As mentioned at [5] above, at paragraph 30 of the Master's note of his factual findings he refers to the fact that the petitioner wrote following the hearing before him to draw attention to the fact that since May 2010 she had seen documentation concerning the opening of a bank account in the Republic of Ireland by the respondent of which she said that she had had no prior knowledge. In evidence before me the petitioner produced a letter to the respondent dated 20 February 2009 described as an "account agreement" which related to the opening of an account described as a "currency current account" the funds for which were said in the letter to be coming from "transfers from Euro account and lodgements of Sterling cheques". There was a Euro account at the same bank and branch for which she had had details and which was described in a similar letter of the same date to the respondent as an "easy current account". The petitioner had written to the respondent's solicitors asking for details of the second account but had not received them and she was concerned that that account might have held further monies that were not disclosed at the time when the negotiations leading to the signing of the agreement had taken place. At my request Ms Robinson produced the statement

relating to the currency current account saying that she believed that it had been shown to the petitioner's counsel on the day when the agreement was made but she could not say that it had been physically provided in the course of discovery.

[8] On examining and comparing the statements for both accounts it is clear that the "currency current account" is a sterling account which was fed by transfers from the Euro "easy current account" of which the petitioner was at all material times aware, with the exception of a sum of £750 used to open the "currency current account" on some date between 20 and 27 February 2009. EUR 8,000 were transferred to it on 5 March 2009 and converted into Sterling of £6,985.61 and a second transfer on 13 March 2009 of EUR 6,000 was made to the account producing a Sterling figure of £5,467.69. The petitioner examined the two accounts while in the witness box and could see the money moving from the account of which she was aware to the other and appeared to be satisfied that apart from the £750 there was in fact no additional money in the hands of the respondent demonstrated by an inspection of the two accounts when placed side by side. Indeed, the petitioner commented that had she seen the second account before today "we might not have been here". I am for my own part satisfied that examination of the second or "currency current account" does not disclose anything of significance that was not known of at the date when the agreement was signed.

[9] The petitioner also made a number of other complaints including an allegation that the agreement had failed to take account of a caravan in Rossnowlagh and of a jeep. But it is plain that those matters were in fact discussed during the period leading up to the conclusion of the agreement and were not overlooked in the course of the discussions. The fact that the petitioner did not receive either of these items under the terms of the agreement is merely indicative of the fact that in the course of any settlement negotiations a party does not always receive all that they would like. Similarly she was mistaken in saying that certain household furnishings and effects were not taken account of. Much of the rest of her evidence was taken up with allegations not against the respondent but against her own former counsel and solicitors. For example she alleged that she did not wish to sign the agreement when it was proffered to her but that her solicitor told her "that was it and to let it go". She also claimed that although she had said to her counsel "that can't be right" counsel had walked off with the signed agreement despite the petitioner telling her that she did not want to go on with an agreement. Cross-examined by Ms Robinson as to why, if she was dissatisfied with the agreement she had nonetheless subsequently proceeded to obtain £10,000 of the £35,000 that the respondent had paid to her solicitors on foot of it and had later pressed them unsuccessfully to release the balance of £25,000 to her? To that the petitioner made no direct reply but she explained her reason for not executing the documents required of her by the agreement as being "because I didn't trust him".

Submissions

[10] On behalf of the respondent Ms Robinson said that she would simply repeat what she had submitted to Master Bell at his fact-find, namely that discovery had been gone through in minute detail and the position regarding the respondent's income had been "dissected" at the time of a prior application for maintenance pending suit. Following the inability of the parties to reach an agreement at an FDR hearing before Master Redpath, a special day had been fixed by Master Bell on 25 May 2010 and that entire day was spent in discussions and negotiations. Before that date there had been several appearances before Master Bell at which the petitioner's advisors sought further and better discovery and only when all requests for discovery on the petitioner's behalf had been entirely exhausted had the matter been listed for hearing. The respondent and his advisors only became aware that there was a problem about the agreement some time after its execution when they were informed that the petitioner was not going to complete her part of it.

[11] In reply the petitioner said that on 25 May 2010 she had voiced her concerns, not to Ms Robinson nor to Master Bell, but that she had said to her own advisors that she wanted the case to go before the court and had been saying so all day to them. She said she had given in under pressure and having realised that her team was not going to listen to her and because she wanted closure and to make a new life for herself. It continued to be her feeling that assets had been concealed from her and her advisors by the respondent.

Consideration

[12] Having watched and listened closely to the petitioner during both the review and substantive hearings before me I am satisfied that she is a capable and astute individual who has demonstrated her ability to perfectly properly seek out and minutely examine relevant documents in search of inconsistencies or irregularities. She is plainly driven by an ongoing bitter antipathy to the respondent despite the passage of years since their separation and has an unfortunate accompanying reluctance to see closure brought to their matrimonial affairs. In the course of the hearing before me the petitioner indicated that she intends to take proceedings against her former legal team and I therefore expressly refrain from deciding whether the petitioner's former legal team, both experienced practitioners in the field of ancillary relief, did, as she alleges, badger or browbeat her into signing an agreement and then placed it before the Master to be made a rule of court in the knowledge that she did not wish to go on with it but rather wished the matter to be decided by the court. Those allegations were roundly denied by her former solicitor and counsel in their detailed evidence to Master Bell at his fact finding hearing. Their truth or otherwise may in the future fall for decision in the event of the petitioner commencing other proceedings.

[13] For the purposes of the petitioner's present application it is sufficient if, in entire agreement with Master Bell, I say that I can find no basis whatsoever either factual or legal upon which the agreement with the respondent made a rule of court on 25 May 2010 can or should be set aside and I decline to do so.

[14] It follows from my conclusion in relation to the agreement and from the fact that the petitioner told me in evidence that if I were to hold against her on the validity of the agreement she would still not feel able to execute the documents which she is required to under the terms of the agreement that I am constrained to make the order sought by the respondent that Master Bell do execute on the petitioner's behalf all such documents as are required to give effect to the agreement on the petitioner's part and I so do.

Costs

[15] I will receive any written submissions that the parties may wish to make in relation to the costs of both applications to be submitted to the court office not later than 10 November 2011 after which date I will give my decision thereon.