

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

McL

Petitioner;

and

McL

Respondent.

(Valuation Hearing)

Master Bell

[1] In this ancillary relief case the value of the principal matrimonial asset, a property located at C Road, could not be agreed between the parties. The property comprises a three bedroom house, outbuildings including four stables, two outhouses and a large barn, and some 17 acres of land. The husband asks that it be valued at £320,000. The wife asks that it be valued at £220,000.

[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to inform the Matrimonial Office in writing within two weeks as to whether there is any reason why the judgment should not be published on the Court Service website in the normal way or as to whether it requires any further anonymisation prior to publication.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] At the hearing each party called one witness to give opinion evidence regarding the valuation of the property. The husband called Mr Young, a partner in Templeton Robinson, the firm of estate agents, auctioneers and property consultants. The wife called Mr Fitzpatrick, the principal of Peter Fitzpatrick and Sons, the estate agents, chartered surveyors and auctioneers. Neither counsel, Mr Ritchie for the husband and Miss Steele for the wife, 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.

MR YOUNG'S EVIDENCE

[4] Mr Young gave evidence that he has no formal qualifications. He has worked for Templeton Robinson for 22 years, been a valuer for 15 years and been a partner in the firm for 8 years. He described valuations as being part and parcel of his job. He stated that he had a lot of experience of country properties. That included areas of land. Mr Young was not prepared to accept that Mr Fitzpatrick's qualification as a Chartered Surveyor gave Mr Fitzpatrick expertise and experience that he did not have. He stated that he would receive telephone calls from surveyors asking for his assistance and he had valued properties on behalf of banks. He did not, however, state how frequently either types of work occurred. On the basis of his experience I accepted Mr Young as an expert witnesses who was entitled to give opinion evidence.

[5] Mr Young adopted his written report dated 14 October 2011 as his initial evidence. The report is in very basic terms. It is in the form of a letter, describes what the property consists of, and states that in his opinion the market valuation would be in the region of £320,000. The written report contains no details of any comparable properties which have been considered by Mr Young. Mr Young referred in his evidence to a bundle of typed notes dealing with what were said to be five comparables and two printouts from the property.com website.

[6] In his oral evidence Mr Young described a number of general principles which had informed his opinion. While proximity to a main town may be important, if a purchaser wants to buy a property of 20 acres or more it is the site itself that is more important than the location. In reaching a conclusion as to value, it is important to take into account prices that were actually achieved in completed sales and not simply vendors' initial asking prices.

[7] In terms of the methodology used by Mr Young to value the property he made a number of statements. Mr Young stated that, while he had some initial comparables in mind, there had been so few sales in the last 12 months he had had to go to other agents for more comparables. Hence he had made

enquiries with Tim Martin & Co and with Agar Murdoch and Deane. In cross examination he was asked why he had not enquired of Peter Fitzpatrick & Sons. He replied that he preferred to contact those whom he knew well and could simply telephone and have a conversation with. He admitted in his evidence that he had not visited any of the comparable properties. When it came to describing the property itself, Mr Young gave detailed evidence in respect of the condition of house and outbuildings at C Road.

[8] Mr Young was asked in cross-examination how many of the firm's current clients were seeking to sell smallholdings. He replied that the firm had ten such clients. When asked how many sales of such properties his firm had made last month, he replied that there had been no such sales.

[9] In his oral evidence Mr Young offered five main comparables: 32 B Road, 81 C Road, 30 P Road, land at A Road, and 18a L Road. He went through each of these in turn, providing some detail in respect of each property and the final sale price or sale agreed price. As a result of these comparables Mr Young valued the house and outbuildings at C Road at approximately £185,000 with the land valued at approximately £8,000 per acre, giving a total valuation of £320,000. Asked by Miss Steele as to why there were different views held by himself and Mr Fitzpatrick as to the valuation of C Road, Mr Young stated that he did not understand why there was a divergence of opinion.

MR FITZPATRICK'S EVIDENCE

[10] Mr Fitzpatrick gave evidence that he had studied at the University of Ulster, had qualified as a chartered surveyor in 2006, and was a member of the Royal Institute of Chartered Surveyors. He had worked at Peter Fitzpatrick & Sons, where he was now the principal, since 2007. His clients included the Northern Ireland Housing Executive, Ards Borough Council, and the major banks in Northern Ireland. He also did work for private clients in a matrimonial and probate context.

[11] In his oral evidence Mr Fitzpatrick described a number of general principles which informed his opinion. He stated that the value of land varied from parish to parish. Land will make an increased price if there is a special purchaser, someone who wants it for a particular reason, for example a farmer who wants to expand his farm for his son. Sales should not be used as comparables if they were sold in two or more lots. Land will make an increased price if it has development potential or has a good location. In looking for comparables, valuers should only consider sale prices or sale agreed prices and not asking prices. He took into account that even with a sale price agreed, if a surveyor gave a lower valuation to the bank that might well result in a lower mortgage offer being made available to the potential purchaser and hence that might drive the selling price down further after more negotiations. He knew of cases where the price had fallen 50% post

survey from the original agreed price. Mr Fitzpatrick also took into account the fact that land currently in the hands of NAMA being put on the market is likely to drive prices down further in the future.

[12] Mr Fitzpatrick adopted his written report dated 26 August 2011 together with his supplementary written report dated 16 December 2011 as his initial evidence. The former valued the property at £230,000 while the latter valued it at £220,000. The written report contains details of five comparable properties which have been considered by Mr Fitzpatrick: 22 D Road, 116 B Road, lands at D Road/C Road, a building site at V Road, and 51 D Road.

[13] Mr Fitzpatrick's valuation report of 16 December 2011 attached a Valuation List Entry from the Department of Finance and Personnel's Land and Property Services division which placed a capital valuation on the house of £120,000.

[14] Mr Fitzpatrick was asked by his counsel how many of the firm's current clients were seeking to sell properties in the relevant county and he replied that they had 175 such clients. When asked how many sales of properties in County Down his firm had made last month, he replied that there had been 13 such sales of which three were comparable to the property now under consideration. He gave evidence that his firm specialised in the kind of property which was now the subject of the valuation hearing.

[15] In his oral evidence Mr Fitzpatrick offered the five main comparables mentioned in his written report. He went through each of these in turn, providing some detail in respect of each property and the final sale price or sale agreed price. In addition to these comparables Mr Fitzpatrick also offered as comparables three properties which had been sold in January: the previously mentioned 116 B Road, and two additional properties namely land at S Road and land at G Road. As a result of these comparables Mr Fitzpatrick valued the house and outbuildings at C Road at approximately £120,000 with the land valued at approximately £5,500 per acre, giving a total valuation of £220,000.

CONCLUSION

[16] 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 on this occasion, include the correctness of the expert's factual premises and underlying assumptions; the objectivity or bias of an expert; changes of opinion by an expert; and the impact of an expert straying outside his field of expertise. The factors which were relevant in this case, and which I took into consideration, are as follows.

[17] Firstly, the issue of the expert witnesses' qualifications and experience. Miss Steele stressed the fact that Mr Fitzpatrick was better qualified than Mr Young. Mr Ritchie stressed Mr Young's long experience in the field. Mr Young asserted that having no formal qualifications did not put him at any disadvantage in valuing the property. I take into account that a qualification in a particular field is not necessarily a trump card resulting in the opinion of the qualified witness automatically prevailing over the opinion of the witness who is not so qualified. At the close of counsels' examination of Mr Fitzpatrick I asked the witness what advantages his qualification gave him over Mr Young. He answered that his qualification allowed him to be a member of panels receiving work from banks; that his firm was properly audited by the Royal Institute; and that he had access to up to date literature. When pressed as to how the qualification might mean that his opinion should be more relied upon, his answer was merely that he was better able to see defects in properties. I was not satisfied that this alone gave him a significant advantage over Mr Young. However when it comes to experience, and taking into account the significantly different questions posed by Miss Steele to each witness, Mr Fitzpatrick's firm does seem to specialise in property in the locality under consideration much more than Mr Young's firm. On this point I considered that Mr Fitzpatrick's opinion deserves more weight.

[18] Secondly, the issue of the experts' methodology. Both experts had examined the house at C Road. There was a difference however in their examination of the land. Mr Young stated that he had walked onto only one field. He had not therefore walked all the land. Mr Fitzpatrick on the other hand gave evidence that he had walked the land. In the bundle of photographs submitted by Mr Fitzpatrick there were three photographs clearly taken from within the fields in question, showing that, in part, the land was of poor quality, being marshy. The photographs submitted by Mr Young, which he stated had not been taken by him personally, all seemed to be taken from concreted areas of the property, were the type of photographs which might be used by estate agents for marketing the property, and did not show the actual state of the land. In response to the issue of some of the land being marshy, Mr Young's response was that this had not been a factor in other cases he had handled. In addition, I was not confident in the amount of knowledge that Mr Young demonstrated in relation to some of his offered comparables. In relation to the comparable at 81 C Road, for example, he commented that he had only had a brief conversation with Tim Martin about the property and that he had no more details in respect of it. On this point I considered that Mr Fitzpatrick's opinion deserves more weight.

[19] Thirdly, the issue of the reasoning which underlies the expert's opinion. Mr Young stated that he was prepared to accept that there were variations in the value of land. In terms of a description as to what might cause such variations, his explanation was thin. He noted at one point that sometimes it just depended on who the buyer and seller were. Sometimes a

neighbouring farmer might want a piece of land and that would push the price up. Mr Fitzpatrick described the land in his evidence as average agricultural land with wet areas and some areas of bog. Mr Young described it as arable land. Mr Fitzpatrick challenged this stating that it had not been ploughed for 30 years. He stated that arable land always has greater value but the land badly needed ploughing to help it. He also gave evidence that the type of purchaser who would have previously been interested in buying a property such as C Road would have been those involved in equestrianism. However he stated that money had evaporated from the equestrian scene now. He considered that the only viable purchaser was a new or up and coming farmer. I was more impressed by the quality of Mr Fitzpatrick's reasoning. On this point also therefore I considered that Mr Fitzpatrick's opinion deserves more weight.

[20] Fourthly, the issue of how the experts performed under cross-examination. Certain defects in each witness's evidence were somewhat exposed in cross-examination by opposing counsel. It is hard to justify a valuation of a property using a comparable sales method when the valuers have not themselves visited the properties which are used as comparables. I would have been more convinced by the comparables had this been a valuation of a semi-detached residential property and similar semi-detached properties had been offered by way of comparables. The difficulty is that rural properties comprising a residence and land have many more variables than residential properties. On this issue I decline to give either expert's opinion more weight than the other.

[21] I found Mr Fitzpatrick's evidence more persuasive than Mr Young's in relation to land values. I have concluded that Mr Young in his valuation is likely to have over-estimated the value of the land. His opinion suffers from the defect that he did not walk the land and examine what it was that he was valuing. He has no basis for comparing the state of this land with land purchased in other sales. On the other hand Mr Fitzpatrick has examined the land in question and has articulated a rational basis as to why this particular land may be of a certain value.

[22] However Mr Fitzpatrick's evidence is not completely without weakness. While satisfied with his valuation of the land, I was less convinced about his valuation of the house and outbuildings at C Road. He offered the Land and Property Services capital valuation from 2005 in respect of the property and suggested it confirmed his valuation. However there is a clear difference between capital valuations and market valuations. When pressed by Mr Ritchie as to the value of the house alone, without outbuildings, Mr Fitzpatrick valued it at £60,000 but suggested that any purchaser might simply demolish the property and build a new house to modern standards. I am, however, unconvinced by Mr Young's valuation of the house at £185,000 given the amount of refurbishment which the house requires.

[23] Taking all these factors into consideration I value the property at C Road at £250,000.