

Neutral Citation: [2017] NICH 1

Ref: HOR10107(2)

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

Delivered: 05/01/2017

2012 No: 142597

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

IN THE ESTATE OF FLORENCE PRESTON MOFFAT

and

IN THE MATTER OF THE WILL OF JOHN JOHNSTON MOFFAT

Between

DOROTHY MOFFAT

Plaintiff

and

**LAURENCE MOFFAT
(Personal representative of John Johnston Moffat (Deceased)
and Florence Moffat (Deceased))**

Defendant

HORNER J

Costs

[1] On 23 November 2016 I handed down a judgment in the application by Dorothy Moffat (“the plaintiff”) to extend time to permit her to make applications under the Inheritance (Provision for Family and Dependants) (NI) Order 1979 (“the Order”) in respect of the estates of John Johnston Moffat and Florence Moffat. I refused to extend time for the reasons which I have set out in my judgment.

[2] As is my practice I offered both sides the opportunity to draw to my attention any typographical errors etc. which might be contained in the draft judgment provided they did so within the next 24 hours. After that the judgment would

become final. This produced an email in response from the plaintiff of 24 November 2016 which went far beyond the opportunity given to both litigants to draw typographical errors to my attention. The final judgment was then handed down as promised.

[3] I also directed that the case be listed for 7 December 2016 to allow the parties to make oral submissions on the issue of costs. The parties were also to provide agreed directions, if possible, or separate directions, if agreed directions were not possible, for the resolution of the other cases then outstanding between them. The plaintiff was advised of this by email of 1 December 2016. The plaintiff did not appear on 7 December 2016. I adjourned the case to 15 December 2016 for an explanation and to allow her to make submissions on the issue of costs. She sent an email accompanied by submissions, none of which dealt in a meaningful way with the issue of costs. No satisfactory explanation for her absence has been provided to date.

[4] I asked her to make oral submissions before me on 15 December on the issue of costs but she claimed she was not in a position to do so. She said she had been misled by the email correspondence from the Chancery Office. I adjourned the case to 22 December and asked that she lodge written submissions by 20 December 2016, but she failed to do so. Indeed, she chose not to turn up on 22 December 2016. I had by then seen the chain of email correspondence which could not have been clearer about the opportunity being afforded to the plaintiff to attend court to make oral submissions on 7 and 15 December 2016 on the issue of costs relating to her failed application to extend time.

[5] I also discovered from that email correspondence that she had complained to the court office alleging that Mr McEwan, counsel for the defendant, may have visited me in Chambers before the hearing on 15 December 2016. This scurrilous suggestion is without any factual basis whatsoever. Moreover, the plaintiff's behaviour in raising this issue with the office staff, but not with me in open court, is wholly unacceptable.

[6] The case was listed for 22 December 2016 at 9:45 am. Checks were made in the main hall to see if the plaintiff was present on the court premises. The hearing then went ahead immediately after 10:00 am, the court having been satisfied that the plaintiff had again failed to appear.

[7] Mr McEwan, counsel for the defendant, then made a submission for costs on the basis as the defendant had been successful in resisting the application to extend time, the defendant should be entitled to his costs in defending the application to extend time in respect of both estates.

[8] Costs of and incidental to all proceedings in the High Court are at the discretion of the court. The basic principle is that costs follow the event: see Valentine on Civil Proceedings, The Supreme Court at 17.04. The event in this case

was the refusal of this court to extend time under the Order to permit applications to be brought by the plaintiff out of time in respect of both estates. There was no material put before the court relevant to this litigation which might permit the court to depart from the normal rule, that is, that costs should follow the event. In those circumstances I award the defendant the costs associated with the hearing of the application to extend time and the three hearings relating to costs. The other case management hearings I will deal with at the conclusion of all litigation between the plaintiff and the defendant.

[9] I will give directions as to how this litigation will be dealt with on 13 January 2017. The plaintiff has until 11 January 2017 to put any further directions before this court which she considers appropriate for the resolution of the outstanding litigation between her and the defendant. On 13 January 2017 I will consider the suggested directions provided on behalf of the plaintiff and the defendant. I will then provide directions which will allow for the fair resolution of the outstanding litigation between the parties.