Neutral Citation no [2004] NICh 4 | *Ref:* **WEIF4115**

Judgment: approved by the Court for handing down | *Delivered:* **24.02.04**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

CHANCERY DIVISION

_____

IN THE MATTER OF THE INHERITANCE (PROVISION 4 FAMILY AND DEPENDANTS) (NORTHERN IRELAND) ORDER 1979

AND

IN THE MATTER OF THE ESTATE OF PATRICK O'NEILL DECEASED

BETWEEN:

VERONICA O'NEILL, TERENCE O'NEILL AND JOSEPH O'NEILL

Plaintiffs;

AND

JOHN RICHARD McPHILLIMY, ELIZABETH McKAY AND CIARA O'NEILL (A MINOR) AND CHRISTOPHER O'NEILL (A MINOR) BY KEVIN O'NEILL THEIR FATHER AND GUARDIAN AD LITEM

Defendants.

_____

WEIR J

[1] This is an application by the first named plaintiff as the widow and by the second and third named plaintiffs as sons of Patrick O'Neill deceased ("the deceased") under Article 4 of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979 on the ground that the disposition of the deceased's estate effected by his will does not make reasonable financial provision for them. The deceased died on 17 May 1999 aged about 76 years survived by the first named plaintiff, then aged 62 years, and five children of whom the second and third named plaintiffs are to. The first and second defendants are the executors of the deceased's last will and

the third and fourth defendants are grandchildren of the deceased, being the children of another son of the deceased, Kevin.

The will

[2] The last will of the deceased was made on 26 January 1999, a few months before his death, and probate was granted to the first and second defendants on 24 February 2003. By the will the deceased left a one third share of his residuary estate to the first named plaintiff and a two third share to the third and fourth defendants who attain the age of 18 years. Each is at present below that age.

[3] The principal assets in the deceased's estate with their approximate valuation are:

(a)	1-3 Bridge Street, Coleraine (known as "Pricecutters")	£500,000
(b)	9 Bridge Street, Coleraine (known as "Queen's Arms")	£360,000
(c)	The Diamond, Kilrea (known as "Mercer's Arms")	£175,000
(d)	8.5 acres of agricultural land at Hillhead, Kilrea	£28,000

While the value of these assets is estimated more than £1 million the estate is also encumbered with debt and the best estimate that the executors were able to make at the trial was that the net estate available for distribution will be approximately £605,000.

[4] Prior to the deceased's death he had carried on the public house businesses at Queen's Arms and Mercer's Arms and the latter was also the family home. He was assisted in the running of the businesses by his sons Terence and Joseph, the first and second plaintiffs. It appears that in recent years there had been a degree of tension between the sons and the deceased as to how those businesses should be run. This appears to have caused or contributed to the deceased's decision not to make any provision for those sons in his last will. After the death of the deceased the businesses were closed for a while until it was agreed between the executors and Mrs O'Neill that she could lease the business in order to preserve their value pending the outcome of the present proceedings. She in turn has arranged for them to be managed by Joseph and Terence as before.

[5] In the period prior to his death relations between the deceased and his widow had deteriorated to the point at which she caused a petition for a divorce to be issued on the ground of the deceased's unreasonable conduct. Those proceedings were pending at the date of the deceased's death and the time of the making of his last will and appeared to have a consideration in his

decision as to the terms of the will because there is a specific provision that the one third share of residue given to Mrs O'Neill is to be void in the event of her having entered into an agreement of matrimonial settlement or an order in relation to matrimonial assets having been made by the court. In the event, of course, the matrimonial proceedings were terminated by the death of the deceased.

[6] If the terms of the will in its present form were carried into effect the businesses would have to be sold and the means by which Terence and Joseph presently make their living would be lost. For that reason Mrs O'Neill wished, if possible, that some means might be found of maintaining one or both of the businesses.

[7] At an early stage in the hearing Mr Denvir who appeared for all the plaintiffs announced that the second and third plaintiffs, Terence and Joseph, wished to withdraw their claims and it was agreed that they might do so without any order for costs either against them or in their favour. So far as the remaining plaintiff, Mrs O'Neill, was concerned it was agreed on behalf of all the defendants that the disposition of the deceased's estate effected by the will was not such as to make reasonable provision for the plaintiff. Indeed, there was exhibited to the affidavit of Mr McPhillimy, one of the executors, sworn on 25 November 2003 an attendance made by him on 26 January 1999 when the deceased consulted him about his intention to change his will that he, Mr McPhillimy, had explained to him the need to make reasonable provision for his wife and that he had suggested leaving 50% of the estate to her. The deceased had indicated that he thought Mr McPhillimy was being "too generous" and changed the provision to her to one third, adding the proviso in relation to any matrimonial settlement or award.

[8] I therefore turn to consider the second step namely, to determine whether, and in what manner, the court did exercise its power to effect reasonable financial provision. I was helpfully referred by counsel to the decision of Weatherup J in Re Moorhead's Estate; Moorhead v Morrow and Others [2002] NIJB 83 in which the matters to which the court is have regard in exercising its powers under Article 4 are set out and discussed. I have carefully considered each of those matters in arriving at my decision and have taken account of such as apply to the circumstances of the present case. The parties did not request me to hear oral evidence from the family members on either side of the case so that the matter proceeded on the affidavits filed other than those of the second and third plaintiffs which it was agreed I should disregard. I have no doubt that this was a sensible and pragmatic decision on the part of all counsel involved which avoided further inflaming the unfortunate family dispute which the dispositions made by the deceased's will have, if not caused, greatly exacerbated. I make it clear that I have not attempted to reach a conclusion as to the factual disputes thrown up by the competing affidavits.

[9] What is however beyond dispute is that this was a long marriage of 34 years duration during which Mrs O'Neill bore the deceased five children, the first four within little more than four years. Similarly there is no dispute as to her major contribution to looking after the home and bringing up the family, although there is a difference as to the amount of time she in fact devoted to the running of the businesses, it being suggested on behalf of the third and fourth defendants that she had her hands full with family matters and so would have had little time to devote to the business. Whereas she says that she participated actively and extensively in the running of the businesses. As I say, I have not attempted to resolve that issue nor do I consider it necessary to my decision to do so. I am fortified by that view by the decision in Lambert v Lambert (2003) 4 All ER 342 where the issues was admittedly one of financial provision on divorce but the general proposition that homemakers are not to be discriminated against in favour of active breadwinners in my view is equally applicable to financial provision cases.

[10] It was also not disputed that over the years the widow had brought several sums of money into the marriage acquired from her own family and that these, totalling approximately £35,000, went either towards the upkeep of the family or to the family businesses. I also note the fact that, at the date of her marriage, the deceased was already the owner of the Queen's Bar, Coleraine, which is a significant asset in the overall value of the gross assets of the estate. These matters are not susceptible of precise calculation. Weighing all the factors that I have identified I have concluded that in order to secure reasonable financial provision for the widow that the will of the deceased should be altered:

(i) Subject to a matter that I will mention below, a specific bequest of the Queen's Arms to be held in trust for the third and fourth named defendants as tenants in common in equal shares upon attaining their majorities. In the event that either does not attain his or her majority that share is to pass to the survivor of them.

(ii) The residuary estate of the deceased after payment of all proper debts, funeral and testamentary expenses including the costs of these proceedings is to be held in trust for the first named plaintiff, Mrs O'Neill, absolutely.

(iii) In relation to the specific bequest of the Queen's Arms to the third and fourth defendants, as neither would become entitled to a share for some years and neither would therefore be able to conduct the public house business presently carried on there, even if either of them ultimately wish to do so, that legacy would be subject to an option to the first plaintiff to purchase those premises for the sum of £360,000, being the amount of their agreed probate valuation, provided that such option be exercised by a date that I shall fix when the matter is finally disposed of. In the event of the option being

validly exercised the proceeds of the sale shall be held on the same trusts as are provided for above.

(iv) I remove the obligation on the trustees to sell, call in and convert the estate into money although they of course retain the power to do so insofar as may be necessary to pay any monies due by the estate.

(v) I therefore make an interim order that the first and second defendants prepare a draft order for the carrying into effect of these alterations to the will which is to be lodged in the office within not more than three months from 24 February 2004. With regard to costs, the parties have proceeded on the basis that the costs of the remaining parties should be paid out of the estate and I so order. The draft order should provide for those costs and their taxation. The matter will be relisted as soon as the draft order has been lodged in the office.