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

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION

IN THE MATTER OF AN APPLICATION
FOR THE DECLARATION OF THE PRESUMED DEATH
OF DEIRDRE MARIE O’FLAHERTY NÉE DONNELLY

DEENY J

[1] This is an application brought by Dr Kenneth O’Flaherty of County Tyrone. It is the first application brought before the court under the Presumption of Death Act (Northern Ireland) 2009. At common law it was normally necessary to wait 7 years before obtaining a declaration that a missing person was dead. The purpose of the 2009 Act was both to clarify the law in that regard, but also to give an opportunity for the court to make declarations of presumed death at an earlier date where appropriate. Section 1 of the Act so far as appropriate reads as follows:

“1 – (1) Where a person who is missing –

- (a) is thought to have died; or
- (b) has not been known to be alive for a period of at least 7 years,

any person may apply to the High Court for a declaration that the person (in this Act referred to as the ‘missing person’) is presumed to be dead.

(2) The High Court has jurisdiction to entertain proceedings for a declaration under subsection (1) if (and only if) –

- (a) the missing person was domiciled in Northern Ireland on the date on which he or

she was last known to be alive or had been habitually resident there throughout the period of one year ending with that date;

- (b) the applicant—
 - (i) is the spouse or civil partner of the missing person; and
 - (ii) is domiciled in Northern Ireland on the date when the proceedings are begun or has been habitually resident in Northern Ireland throughout the period of one year ending with that date; or
- (c) the applicant is a close relative of the missing person where the missing person is a victim of violence (within the meaning of section 1(4) of the Northern Ireland (Location of Victims' Remains) Act 1999 (c. 7))."

[2] Dr Kenneth O'Flaherty brings this application pursuant to Section 1(1)(a). He does so because the missing person, Deirdre Marie O'Flaherty née Donnelly, is thought to have died and he is her spouse. He has sworn an affidavit before the court. He has established the necessary requirements before the court to which I will turn in a moment under the Rules including the domicile of Deirdre Marie O'Flaherty and of himself. Section 2 of the Act deals with the making of a declaration of presumed death and subsection (1) reads:

"2—(1) Where on an application for a declaration under section 1 the truth of the proposition to be declared is proved to its satisfaction, the High Court must make that declaration and—

- (a) where the Court is satisfied that the missing person has died, the Court must include in the declaration a finding as to the date and time of death and, where it is uncertain when, within any period of time, the missing person died, the Court must find that he or she died at the end of that period;"

[3] In dealing with the Act I note that the court has power pursuant to Section 4 and subsequent Sections to determine any question relating to the interest of any

person in the property of the missing person. There is no such application in this case. Mr Ivor McAteer has presented this matter very ably, instructed by Messrs Dickson & McNulty, and has explained that any property, ie a house in County Tyrone and a holiday home in County Donegal, owned by Deirdre Marie O'Flaherty was held on joint tenancy with her husband. Therefore, on the finding by the court of her presumed death he would become the sole owner by operation of law.

[4] Pursuant to the Act, the Rules of the Court of Judicature, as it now is, in Northern Ireland, were amended to create a new Order 93A. Amongst other things the Rules provide at Rule 2, paragraph 3, that an application for a declaration of presumed death shall be supported by an affidavit which will contain details of the following, where known -

- (a) The name and address of the applicant - I have given the name and the address is disclosed in the affidavit of the applicant;
- (b) The relationship of the applicant to the missing person - which, as I have said here was man and wife;
- (c) The name of the missing person to whom the application relates and any other names by which the missing person is known - which, again, have been provided. The applicant's wife practised under her maiden name as a doctor;
- (d) The address of the last known residence of the missing person - and, again, these are set out in the affidavit;
- (e) The date of birth of the missing person - her date of birth was 16 March 1962;
- (f) The National Insurance Number of the missing person which, again, has been provided.

Thus the formal requirements have been dealt with in that regard.

[5] The application has been very properly prepared. It was served as required by Rule 3 of Order 93A on the Crown Solicitor for the benefit of the Attorney General and Mr McCrisken of the Attorney General's Office attended and confirmed that the Attorney General had no objection to the application on this occasion. It was also served pursuant to Rule 4(1)(a) on the Registrar General and also pursuant to Rule 4(1)(c) "on any other person, including any insurance company, who, so far as is known to the applicant has any interest in the application". It was thus properly served on the Prudential Insurance Company who hold a policy of insurance in regard to Deirdre Marie O'Flaherty and out of an abundance of caution also on Her Majesty's Customs and Excise.

[6] The applicant is required by Rule 4(4):

“To cause notice of an application for declaration of presumed death to be published, in Form No 76, at least 21 days before the hearing, in at least one edition of one newspaper circulating in the vicinity of the last known residence of the missing person unless the court otherwise directs.”

That was done on 28 November 2011 by an advertisement which I have seen and considered appropriate, in the North Western Edition of the Belfast Telegraph.

[7] The unhappy circumstances which lead to this application are set out in the affidavit of Dr O’Flaherty. They are also to be found in a statement he gave to the Garda Siochana. They are also to be found in a letter of 4th March 2010 helpfully furnished by the Garda Siochana. Furthermore, Sergeant Martin Egan of that body cooperatively attended at court and gave evidence on Oath. I take the opportunity to say that the fact that a police statement was taken should not be mis-understood in any way. There is not the slightest suggestion of any foul play in connection with the disappearance of this lady as will appear from the circumstances I will describe. I have taken into account those documents and the clear and helpful evidence of Sergeant Egan.

[8] The position is, as I have indicated, that the applicant and his wife had a holiday home in County Donegal and they were present there on the evening of Saturday 10 January 2009 with their children. I do not think it is necessary to further identify the children. They retired to bed at slightly different times. The applicant noted that his wife was out of bed at some stage in the night but that was not unusual. In the morning he rose and tended to his youngest child and his other children having noticed that his wife was not in the bedroom when he woke. Furthermore, he then noticed that her car was not present but this did not seem to him particularly strange and he assumed that she had gone for a walk or a drive. Some little time later he decided to take the children for a walk but when he was making ready to do so he received a phone call to say that his wife’s BMW X5 car was present at Kinnego Beach and that he ought to make his way there. That was the start of what I consider an overwhelming weight of evidence that this lady did die on this morning.

[9] First of all the car itself was not in a convenient car park but on the beach and, as the sergeant points out, close to the waterline. The doors were shut but the ignition keys were in the car. The seat was drawn forward in a way that would be consistent with a lady driving the vehicle. There was a pair of female sandals at the pedals of the vehicle. The car had been present for some time before it was reported to the Garda at 11.30 am, having been seen by at least two persons. Dr O’Flaherty estimates that he would have risen about 9.00 am as I understand it so it would appear the lady had made her way down there some time about 9.00 am. Kinnego Beach is obviously on the Atlantic. These were and had been suspicious

circumstances but they were, as I say, convincingly borne out by a series of further findings. First of all the lady's medical bag was still in the vehicle. She worked for the Western Urgent Care Out-of-Hours Practice. Anyone familiar with general practitioners will know that it is their almost invariable practice to bring their medical bags with them and I find it significant that it was left in the car. On returning to the house after an initial search Dr O'Flaherty, no doubt to his great distress, found three cards for the children reading : "I will always love you xx Mum". She had left her wedding ring and engagement ring at the house and also her mobile phone. He subsequently found her United Kingdom Passport. Sergeant Egan was able to confirm that she had never applied for an Irish Passport nor has one been applied for since her disappearance. There were extensive enquiries made at the time. A search was carried out with the assistance of the authorities in the Republic in a diligent fashion, but no body was found. The RTE Crime Call program a year later reviewed the case but no-one came forward. Since the disappearance of Deirdre Marie O'Flaherty there has been no activity on her credit cards nor any withdrawals from her accounts.

[10] This lady worked, as I have indicated, as a doctor and was the mother of three young children and hers was a happy marriage, but it is right to say that she did suffer from and received medication for depression which can be a very dangerous illness because of the very circumstances that I now find have arisen here. I do find that this lady has died. I find that she died on 11 January 2009 between 9.00 am and 11.00 am and by 11.00 am having entered the sea at Kinnegoe Beach, Co. Donegal and subsequently drowned.

[11] As I have indicated, no application is sought from the court regarding the property of the deceased as I find her to be. I, therefore, make an order pursuant to Form No 77 in this court upon the application of Dr Kenneth O'Flaherty and upon hearing the applicant by his counsel and Sergeant Martin Egan, Garda Siochana, and having considered the papers submitted. It is hereby declared that it has been proved to the court's satisfaction that Deirdre Marie O'Flaherty née Donnelly is presumed to be dead and that the said Deirdre Marie O'Flaherty née Donnelly is found to have died on Sunday 11 January 2009 at the end of the period from 9.00 am to 11.00 am.

[12] No further relief is sought. Notice is to be served on the Registrar General for Northern Ireland. There is no application for costs.