

Neutral Citation no. [2008] NIQB 39

Ref: HAR7129

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

Delivered: 8/4/2008

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

**CHRISTINE MEYLER AS EXECUTOR OF THE
ESTATE OF JOSEPH PATRICK FERRIS (deceased)**

Plaintiff/Respondent.

And

JOSEPH FERRIS

Defendant/Appellant.

HART I

[1] This is a civil bill appeal by the defendant from a decision of His Honour Judge McFarland given on 30 March 2007 in partition proceedings brought by way of an equity civil bill in which various forms of relief, including declarations, were sought. However, as Judge McFarland recited in his written judgment, and as Mr Dermot Fee QC (who appeared with Mr McHugh for the plaintiff) confirmed on appeal, the application is essentially for an order for the sale of the property concerned.

[2] The property consists of approximately 7 acres comprised in Folio 2974 County Tyrone (the lands) situated at Mullaghmore, County Tyrone. The action is brought by Miss Christine Meyler as one of the executors of the estate of Joseph Patrick Ferris (the deceased) who died on 15 May 2000 on foot of the Grant of Probate of his estate dated 12 October 2000. The defendant Joseph Ferris is the son of the late Charles Ferris, and a nephew of the deceased. The defendant is the registered owner of a two-ninths share of the lands comprised in the Folio, and the deceased was the registered owner of

the remaining seven-ninths. The defendant however counter claims that he is entitled to a half share in the lands as successor in title to his father.

[3] As the defendant is now a litigant in person, I feel that I should record a number of procedural aspects of the appeal that would otherwise not require to be mentioned. The first is that although his notice of appeal was out of time I extended the time for appeal under Order 3(5) of the Rules of the Supreme Court. Secondly, the defendant sought to call two witnesses whose evidence I ruled inadmissible, Eugene Owens and Dan McCafferty. The evidence I was informed that they would give related to matters that were wholly unconnected with the issues in the present case and was therefore irrelevant and inadmissible. Thirdly, in his appeal book the defendant exhibited the written judgment of His Honour Judge McFarland to which I have already referred. Whilst this appeal is a complete rehearing, in any civil bill appeal a written judgment from the County Court judge can be of considerable assistance to the parties and the judge on appeal, and that was the case in this instance as the parties sensibly agreed that I should read the judgment before the appeal commenced. As will be apparent in this judgment I have referred to Judge McFarland's judgment from time to time, and in particular for ease of reference I have used the same nomenclature for various individuals who have been referred to in these proceedings. However, I have reached my own conclusions on the evidence placed before me in the course of the appeal.

[4] The plaintiff's claim stems from an agreement made in June 1989 between Bridget Ferris, Joseph Patrick Ferris, and the defendant's father Charles Ferris, but in order to explain the background to the respective contentions of the parties it is necessary to say something about previous generations of the Ferris family and their connection with the lands. For present purposes it is sufficient to say that Anne Ferris became the registered owner of the lands in 1901. She died a widow and intestate in 1925, having had eight children, one of whom was Charles Ferris senior, the grandfather of the defendant. It appears that Charles Ferris senior occupied the lands from his mother's death in 1925 until his death intestate on 25 November 1945. He was survived by his widow Bridget (who died intestate on 6 April 1962) and five children, two sons and three daughters. One of their sons was Charles Ferris, father of the defendant, the other was Joseph Patrick (or Joseph P) Ferris. The three daughters were Bridget (known as Bridie) Ferris, Ellen Ferris and Mary Ferris, none of whom married or had issue.

[5] As was extremely common, not only did a number of those to whom I have referred die intestate, but no steps were taken to register ownership of the lands after the initial registration of Anne Ferris. So far as the parties to the present proceedings are concerned, it is common case that Charles Ferris senior remained in sole occupation of the lands after his mother's death in 1925 until his death in 1945, and that his widow Bridget continued to live on

the lands until her death in 1962. However, whilst it is common case that their daughter Bridget lived on the lands after her mother's death, the positions of herself, Ellen, Mary and Charles Ferris so far as ownership and user of the land are concerned are controversial.

[6] The defendant asserts that Bridget did not actively farm the lands until after her sister Ellen's death in 1982, and in a document he compiled dated 13 March 2007 he says at paragraph 20 that although she resided on the lands she never actively worked them. He says at paragraph 31 that his brother Brian Ferris has been involved in farming the lands "for the past 40 years", and the defendant informed me that Brian Ferris has made a claim to these lands on the basis of adverse possession. Brian Ferris took no part in, nor did he give evidence in, the hearing before me, and I merely note his claim in passing. Charles Ferris junior, who is the son of Charles Ferris, is a brother of the defendant and therefore a grandson of Charles Ferris senior.

[7] Judge McFarland records "there is some dispute as to what happened on the land after Charles Ferris senior's death. Bridget and Joseph contended that Charles [Ferris] left the land in 1946, and their mother continued to occupy it, and after her death Bridget and Joseph occupied it". In order to complete the background to the disputed agreement of June 1989 I should also record that Mary Ferris died intestate in 1975, and Letters of Administration in her estate were granted to Ellen Ferris in 1975. Ellen died intestate in 1982, and Letters of Administration in her estate were granted to Joseph P Ferris in 1989.

[8] In May 1986 Bridget and Joseph P Ferris made a joint application to the Land Registry to be registered as joint registered owners of the Folio, Charles Ferris objected, and the matter was referred to the County Court. It came on for hearing before His Honour Judge Babington QC on 30 May 1989. Having heard the evidence Judge Babington dismissed the application. No written judgment was delivered, nor does anyone appear to have taken a note of the proceedings or of his reasons for dismissing the application. However, I am satisfied from the evidence of Miss Meyler, who represented Bridget and Joseph P Ferris at that time, and of Mr Montague, who represented Charles Ferris, that, inter alia, Judge Babington was not satisfied that Bridget had been in sole possession of the lands for the necessary 12 years as Mary had died in 1975, and Ellen had died in 1982. After the dismissal of the application an appeal to the High Court was lodged by Miss Meyler on behalf of Bridget.

[9] The disputed agreement of June 1989 came into existence as a result of the failure of the application to the County Court, and it is now necessary to examine the evidence as to how and when the agreement came into being. Prior to the County Court hearing Joseph P Ferris had apparently decided that any share he might be entitled to in the lands should go to his sister Bridget. After the application was dismissed, as Miss Meyler recognised in

her evidence, if an agreement could be reached between Bridget and Charles without the need for an appeal this would be in Bridget's interest. She was by now in her 70s and, unlike Charles, was not legally-aided. Miss Meyler's recollection is that because she wanted to advance matters as far as possible she probably opened discussions with Mr Montague before they left court after Judge Babington gave his decision. She recognised that Bridget's position was complicated by the intestacies of Mary and Ellen, and so a proposed settlement was reached between herself and Mr Montague that the most that Charles Ferris could be entitled to on the basis of the intestacies, that is the intestacy of his mother and his sisters Mary and Ellen, would be a two-ninths share in the lands. This was a one-third share of Mary's one-third share in her mother's estate, and a one-third share of Ellen's one-third share in her mother's estate, making a two-ninths share in all.

[10] Whilst this was described by Miss Meyler as an agreement, it was clearly no more than an understanding reached between the solicitors concerned of what represented a realistic assessment of their respective clients entitlements to the lands, and this proposed settlement would have to be accepted by their respective clients if it was to become a binding agreement. In due course Miss Meyler obtained her clients' consent and then drew up a short document embodying the terms of the proposed agreement. She believes that she had obtained the signatures of Bridget and Joseph P Ferris before she sent the document to Mr Montague's office.

[11] The document was signed by Bridget, Joseph and Charles, and the terms of the agreement were as follows.

"IN THE MATTER OF THE LAND REGISTRATION ACT (NI) 1970
AND OF THE COUNTY COURT (NI) ORDER 1980

FOLIO NO - 2974

BRIDGET FERRIS: APPLICANT: 106 Old Mountfield Road, Omagh

CHARLES FERRIS: OBJECTOR: Glenhordial, Waterworks Road,
Omagh

JOSEPH FERRIS: FORMER JOINT
APPLICANT:

IT IS HEREBY AGREED BETWEEN THE PARTIES that the lands in Folio No 2974, County Tyrone, be registered in the names of both BRIDGET FERRIS and CHARLES FERRIS in the following shares as tenants in common:

- (a) BRIDGET FERRIS as the owner of 7/9 of the lands
- (b) CHARLES FERRIS as owner of 2/9 of the lands.
- (c) JOSEPH FERRIS withdraws any claim to be registered as owner of any portion of the said lands.

Dated this 20th day of June 1989"

[12] As can be seen the agreement contains the typed date of 20 June 1989. That was a Tuesday, but the agreement could not have been signed by Charles Ferris on that date. On 21 June 1989, which was Wednesday, Mr Montague wrote the following letter to Charles Ferris at his home address at 7 Waterworks Road, Glenhordial, Omagh.

"Dear Mr Ferris

Could you possible (sic) call with us on Thursday to execute a Form of consent in relation to the registration of the lands the subject of the dispute. It is important that you try to see us on Thursday as the Judge will be sitting on Friday but will then be absent for a number of months until the start of the new sessions in September."

The terms of this letter clearly imply that the agreement had not yet been formally assented to by Charles Ferris, but throw no light on whether the proposed agreement had already been discussed with Charles by Mr Montague.

[13] Miss Meyler explained that at that the time the agreement was drawn up she believed that the judge could make a declaration in the terms of the agreement. This would have the advantage of meaning less work for her and so less cost for her client, presumably because a declaration by the court in the terms of the agreement would lead to the Land Registry entry being altered to conform with the declaration, thereby removing the need for further applications to the Land Registry with the expense that that would involve. However, this expectation proved to be unfounded, because Judge Babington apparently indicated to counsel that he had no power to make such a declaration. That it was hoped that the judge would make such an order would explain the reference in Mr Montague's letter of 21 June to the judge sitting on Friday, and I am satisfied that this possibility must have been discussed between Mr Montague and Miss Meyler before Mr Montague wrote that letter.

[14] Mr Montague is solely dependent upon the content of the relevant documents, and upon his recollection, for his account of events leading up to the signing of the agreement because his file in relation to the matter was subsequently transferred to another firm of solicitors at the request of the defendant and his father. Charles Ferris had been a client of Mr Montague's practice for many years, and Mr Montague appeared for Mr Ferris before Judge Babington when he succeeded in defeating the Section 53 application. Mr Montague's recollection was that discussions took place between Miss Meyler and himself after the hearing; that Miss Meyler conceded that his client was entitled to a two-ninths share of the lands calculated on the basis of the shares of the various next of kin as a result of the intestacies, and that his client agreed to a two-ninths/seven-ninths division between himself and Bridget. Mr Montague is clear in his recollection that Charles Ferris was entirely satisfied with this result because it recognised his interests in the lands for the first time. There was no difficulty in obtaining Charles Ferris' signature to the agreement when he came in, and he believed that the defendant was with his father that day. Miss Meyler's file shows that on 22 June 1989 Mr Montague wrote to her in the following terms.

"We return herewith documents which you sent to us which include the Agreement which has been executed by our client. These are sent on your undertaking that the Notice of Appeal already served will be withdrawn."

[15] The defendant's version of events is markedly different from that of Mr Montague. First of all, the defendant cannot see how his father could have come in and signed the document on Thursday 22 June as requested. His reasons for saying this are that it would have been two or three days before he could have got time off to accompany his father. In addition he believes that it would have taken some days for the letter to be delivered to his father. Secondly, his father said to Mr Montague that he totally rejected the proposal; that he couldn't understand why his brother Joseph P was giving his share to their sister when his brother had always said that he (Joseph P) was entitled to the lands, and that his father wanted an apology from his brother and sister. He then alleged that Mr Montague responded by saying to his father would his father sign the document to keep them "both right", and that he, Mr Montague, would then send the letter to Miss Meyler's firm saying that his client was rejecting the offer. The defendant said that he asked could he read the document, and then asked Mr Montague could Mr Montague write across it "offer rejected", and when that had been done Mr Montague remarked to his father "Joe (the defendant) is happy now".

[16] When cross examined the defendant said that Mr Montague sent off a document without the offer rejected writing across it, although he could not be sure whether his father had actually signed two copies of the document. He

went on to say that there was a web of conspiracy. By this he is in effect alleging that Miss Meyler and Mr Montague had conspired together, as he put it when recalled to give further evidence, to deliberately manipulate matters to deny his father's inheritance rights as heir at law to half the lands.

[17] I reject the defendant's evidence, and his suggestion that Miss Meyler and Mr Montague conspired together to deprive his father of his interest in the lands or acted as the defendant alleges they did. I reject his evidence for the following reasons.

- (1) His account of Mr Montague's conduct when his father is supposed to have rejected the proposal is bizarre to say the least. How anyone could be expected to accept that it would be appropriate to sign a proposal, and by doing so consent to it, yet at the same time instruct his solicitor to send a letter rejecting the proposal, is hard to comprehend. There was certainly no suggestion that Charles Ferris was other than a normal intelligent individual, and I can see nothing to suggest that he or the defendant would have been taken in by any such suggestion.
- (2) There was no reason at that time for Charles Ferris to be dissatisfied with the proposed settlement. His sister's claim to the entirety of the property had been rejected by the court, and now he was to get a binding acceptance from her and his brother that he was entitled to a two-ninths share in the lands.
- (3) A small, but nonetheless significant pointer to where the more reliable account of the events surrounding the signing of the June 1989 agreement is to be found is the letter to Miss Meyler from Mr Montague returning the executed agreement. This contemporaneous record shows that, contrary to the defendant's professed recollection, the meeting in Mr Montague's office took place the day after Mr Montague's letter of 21 June to his father.
- (4) I attach no significance to the agreement being dated 20 June before it was sent to Mr Montague. This was clearly done when the document was typed up in Miss Meyler's firm where it was then signed by Bridget and Joseph P.
- (5) It was not until several years later that Charles Ferris removed his business from Mr Montague, who acted for him in a number of subsequent transactions. That the defendant and his father continued to use Mr Montague's services in the interim suggests that they had no reason to be dissatisfied with his probity or ability. I will explain later why I think Charles Ferris changed his attitude towards the June 1989 agreement some years later.

- (6) I did not find the defendant to be a reliable witness in several respects. Firstly, he now accepts that his father signed the June 1989 agreement in his presence, yet he has admitted that he was instrumental in making a complaint to the Police that he believed the signature to be a forgery. Secondly, it was only when confronted with the absence of any copy of the agreement with something written on it that he raised the possibility that there were two copies, one with writing on it and one without. Thirdly, that something was written on the document to the effect that the offer was rejected is at variance with Judge McFarland's account of the defendant's evidence on this point, which was that a line was, or may have been put through the document by Mr Montague to signify rejection of the proposal. Fourthly, when confronted with paragraph 23 of the document prepared for these proceedings headed "Statement of Evidence on behalf of the Defendant", dated 9 January 2006 and signed by his then solicitors, the defendant said that he had never seen it at any time, and if he had he would never have allowed it to go in. Whether or not he ever saw the document, I am satisfied that paragraph 23 represents his instructions at the time it was prepared, and because its contents no longer fit in with his evidence he is prepared to disavow it.

[18] I now turn to events which occurred in 1994 and which I believe explain the change in the attitude of Charles Ferris towards the June 1989 agreement. Whilst much attention has been devoted to this by the defendant, I do not consider that it is necessary to make anything other than a relatively brief reference to the events of that year. On 26 May 1994 Letter of Administration were granted to Anne Ferris' estate. This happened to occur the day after Miss Meyler attended the home of Charles Ferris junior. Miss Meyler's attendance note dictated on 25 May 1994 gives a revealing, and I am satisfied, accurate picture of the tensions within the Ferris family and the pressure being exerted on Bridget at that time to alter the June 1989 agreement to give her brother Charles Ferris a half share in the lands.

[19] The attendance note is in the following terms:

"Wednesday 25th May 1994

Attendance Note:

I was in attendance at the home of Charles Ferris, Junior at his request on behalf of Bridie on above quoted date for a Consultation which lasted approximately one hour. On my entering the room and taking a seat Charles Ferris Junior tore up a document in Bridie's presence and told her that he was tearing up a Power of Attorney. He then asked her to state what it was she wanted.

Bridie was clearly somewhat unsure what to say – she basically said she did not know what she wanted at this stage. Charles Ferris Junior stated that if she granted a Power of Attorney to his father – i.e. Bridie’s brother, he in turn would give her a guarantee that she could live with him and be fed clothed and maintained as long as she wished. I asked him to state whether or not he was prepared to keep Bridie in the absence of a Power of Attorney and he said that was not the issue. Charles Ferris the father had indicated that Bridie had reached an agreement whereby she was prepared to register the home place in joint names of him and his brother Joe. Charles believed he was entitled to an equal share and said that he had never left the home place. My own impression of Bridie was that she was under extreme duress (sic) and in fact I got the clear feeling that her relatives had been working on her since she went to live there in December of last year.

I suggested to her that it was possible to register the home place in all three names. This was rejected out of hand by her brother Charles Ferris who said that was not what he wished and I was simply putting words in her mouth. I stated that Bridie was entitled to be advised of her options and that I for one would certainly not be advising anything that was against her own interest in the homeplace where she had lived all her life.

Charles Ferris Junior asked me to draw up a document there and then whereby Bridie could sign in favour of her brother Charles and Joe. I explained that I was awaiting receipt of a Grant of Administration in the Estate of the Registered Owner and I did not wish to prepare any document prior to the issue of said Grant. Charles Ferris Junior accepted this and said that he would arrange for Bridie to come in on Friday depending on the issue of the Grant.

CHRISTINE:”

[20] Whilst there is no express reference in this attendance note to the June 1989 agreement, the attendance note provides ample corroboration for Miss

Meyler's evidence to me that she remembers the atmosphere as very intimidating and oppressive, and that whilst she was allowed to speak to Bridget on her own, it had been difficult to persuade the others present to allow this. Whatever may be the complete explanation for the events of that day, it is incontrovertible that Bridget was being subjected to considerable pressure from her brother Charles, and her nephew Charles junior, to sign a document which would give her brother Charles a half share in the lands.

[21] On 29 December 1994 Bridget's brother Joseph P was registered as owner of Bridget's seven-ninths share in the lands, subject to a right of residence in her favour. The voluminous correspondence of the defendant with the Land Registry and others, and his affidavits, reveal that in August 1994 the defendant's father engaged Patrick Fahy & Company to act as his solicitors and Mr Montague's file was transferred to them as a result. Whatever occurred within the Ferris family between May and the end of December 1994, it is highly likely that these two events are closely connected.

[22] A further argument developed by the defendant was that a number of factual errors in the oath sworn by Bridget and Joseph P to extract the Grant of Letters of Administration in the estate of Anne Ferris are evidence of a fraudulent approach by them to this application. Judge McFarland has dealt with this in paragraph 12 of his judgment, and I content myself with saying that I am in entire agreement with his reasons for holding that the actions of Bridget and Joseph P cannot be regarded as fraudulent.

[23] Having considered all of the evidence, I am satisfied that the defendant's father Charles Ferris freely, unreservedly, and with a full understanding of what was proposed, gave his consent to the proposed settlement discussed by Miss Meyler and Mr Montague in the aftermath of Judge Babington's ruling, and that there were no reservations expressed by Charles Ferris when he signed the agreement in Mr Montague's office. I am also satisfied that there was no discussion on that occasion that Mr Montague should write, and that Mr Montague did not write, anything on the agreement to the effect that an offer was being rejected. Where their evidence conflicts with that of the defendant I prefer the evidence of Miss Meyler and Mr Montague. The June 1989 agreement was therefore binding upon Charles Ferris and the defendant's defence and counter claim fail.

[24] I have considered whether, in an effort to bring this protracted and no doubt expensive dispute to an end I should simply make an order for the sale of the lands and the division of the proceeds of sale between the plaintiff and the defendant in the proportion of seven-ninths to the plaintiff and two-ninths to the defendant. Whilst I find this an attractive proposition, I have decided against it for two reasons. The first is that at paragraphs 23 and 24 of his judgment Judge McFarland expressed doubts about the Assent executed in 1994, and the title that can be offered to a prospective purchaser, and I am

content to defer to his greater experience of this area of the law. In any event, Miss Meyler said in her evidence that steps have already been put in hand to implement Judge McFarland's suggestion, and I consider that in those circumstances it is preferable to allow these steps to be brought to fruition. Secondly, I have already referred in passing to the assertion by the defendant that his brother Brian has instituted proceedings to claim title to these lands by adverse possession. Whatever the prospect of success of any such proceedings may or may not be, as the question of adverse possession, as opposed to the validity of the June 1989 agreement, was not explored in any detail in this appeal, nor it would seem before Judge McFarland, I consider it would be inappropriate to pre-empt the outcome of any such application.

[25] I therefore dismiss the appeal and affirm the orders of the court below as set out in paragraphs 20 and 21 of Judge McFarland's judgment of 30 March 2007. So far as the costs of the appeal are concerned, the defendant must pay the plaintiff's costs on the seventh band of the Equity Scale in the County Court Rules, such costs to include the appropriate costs of the second day of the appeal hearing. There will be only one set of costs of the appeal on both the civil bill and the counterclaim.