

Neutral Citation no. [2002] NIFam 19

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

Ref: WEAJ3220
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Delivered: 5 July 2002
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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

ROBERT DANIEL MATEER

Plaintiff;

-v-

KERRY MATEER

Defendant.

**WEATHERUP J**

[1] By Civil Bill dated 6 March 2000, which by amendment became an Equity Civil Bill, the plaintiff seeks a declaration that he is the beneficial owner of premises at 56 Iveagh Street, Belfast, the legal title to the property being in the name of the defendant. The proceedings were removed to the High Court, where the plaintiff is involved in a financial dispute arising in family proceedings, on the basis that these proceedings might impact on the financial dispute.

[2] The plaintiff is the father of the defendant and she is 24 years old. From 1995 the plaintiff had difficulties in his second marriage and a decree nisi was granted in 1998, and the wife's financial claim against the plaintiff remains outstanding. In 1997 the plaintiff arranged the purchase of the premises at 56 Iveagh Street, Belfast, for the sum of

£9,500, and the purchase was completed in the name of the defendant. It was agreed by the defendant that the plaintiff had provided the purchase price for the property.

[3] It was the plaintiff's evidence that the money for this transaction represented part of the proceeds of sale of a property in Omeath that had been owned by the plaintiff and his brother Sean Mateer. The present proceedings are not concerned with the arrangements between the plaintiff and his brother Sean and this judgment does not involve any finding as to the origin of the £9,500 or as to the respective interests of the plaintiff or his brother or anyone else in the £9,500, other than the finding that it was actually paid by the plaintiff in respect of the purchase of the property.

[4] Further, it was the plaintiff's evidence that he paid an additional £3,000 towards repairs to the property after it was purchased. The £3,000 was the balance proceeds of sale of the Omeath property that had been paid into a building society account in the name of the plaintiff. The defendant disputed any such payment by the plaintiff. Again I do not find it necessary, for the purpose of the present proceedings, to decide if the £3,000 was paid for repairs or to make any finding as to the respective interests of the plaintiff or his brother or anyone else in the sum of £3,000.

[5] A Housing Executive grant of some £20,000 was obtained in the name of the defendant for the renovation of the property. Work on the property was completed in January 1999 and the plaintiff moved into the property where she resided with her partner, Simon Irwin, until October 1999. At that time the defendant and Simon bought another house together and moved out of the property and the present dispute about the property has continued from that time.

[6] It was the plaintiff's evidence that the property was intended by him to be a retirement nest egg for himself and his brother. He explained that the defendant had left home and that she was staying with an aunt and the plaintiff was concerned about her

health because she was not eating properly. He purchased the property with the intention that it should be a home for the defendant that would provide her with some stability and he put the property in her name for that purpose and had told her that he was putting the house in her name. He was in receipt of supplementary benefit for himself and his son at the time of the purchase and his wife was making a separate benefits claim for herself. The plaintiff and his wife were living in the same house but their relationship in effect had ceased to be a marriage. Accordingly, he did not want his wife to know about his financial affairs or the purchase that had been made. At that time the defendant was not speaking to her mother. The plaintiff indicated that the defendant was not involved in the transaction save to the extent that she left work early one day to sign the lease.

[7] The plaintiff gave evidence that the defendant had recognised the plaintiff's ownership of the property when the defendant and Simon offered to buy the house from the plaintiff and he had replied that the property was not for sale. He also said that the defendant and Simon offered rent for the house but that he refused the rent. He identified occasions when Simon had refused to assist in the house on the basis that the house belonged to the plaintiff.

The plaintiff looked after the repairs to the property. His solicitor had the deeds but they were transferred to the defendant when she requested them from the solicitor when she moved out of the house, which the plaintiff said was a mistake by the solicitor. He had four children and five grandchildren and asked "Why should I pick out one my children to provide her with the property".

[8] The plaintiff denied that the reason for the purchase of the property in the name of the defendant was to conceal some of his assets and to reduce the financial claim by his wife, but he stated that a secondary reason for the purchase in the name of the

defendant was that he did not want his wife to know of his interest in the property and his primary reason was to provide some security for his daughter.

[9] Sean Mateer gave evidence but he was not involved with the defendant and his evidence as to the history of his dealings with the plaintiff does not assist in determining the dispute between the plaintiff and the defendant.

[10] Cathy Boyd is a niece of the plaintiff and a cousin of the defendant. She explained that when the defendant was moving to Iveagh Street the defendant told her that the house belonged to her father and the defendant and Simon had said that they did not want to put money into the house because it belonged to her father.

[11] Roisin Boyd, a sister of Cathy, also gave evidence and she indicated that on a number of occasions the defendant had said that the house belonged to her father. The defendant was said to have told Roisin that she was not putting heating into the house because it was her father's house.

[12] The evidence of the defendant was that the plaintiff approached her about the proposed purchase and that it was her understanding that the house was being bought for her. She stated that her father had told her that the house was hers and that a grant could be obtained. She said he never made it clear to her that she would have to sign over the house. She denied that she had offered to buy the property or that she had made any offer to pay rent. She denied that she had had an eating disorder. She was not aware of her uncle Sean's involvement in the matter. She denied that she had said anything to the Boyd sisters along the lines that the house belonged to her father. She was asked why she should be selected to receive this house as a gift when the plaintiff had four children and she indicated that a sister had received a gift of £4,000 for a wedding present and she believed that a brother had a house in Omeath that was paid for by the plaintiff. She said that she would not have kept information about her father's involvement in the house

from her mother and she told her mother it was her house. It was only after she moved out of the house that the plaintiff said that he was the owner of the property.

[13] Simon Irwin indicated that the plaintiff had told him that he had bought the house for the defendant and he said that he did not offer to buy the house or to pay rent, and in all other respects he confirmed the defendant's version of events.

[14] In the light of that evidence it is necessary to determine the interest of the parties in the property. Lewin on Trusts 17<sup>th</sup> edition at paragraph 9-16 states -

“When property purchased is transferred into the name of a person other than the purchaser, a resulting trust arises in favour of the purchaser if there is a presumption of a resulting trust in his favour which is not rebutted by evidence that he intended a gift, or if the purchaser establishes that it was his actual intention that the property purchased was not to be owned beneficially by the person in whose name the purchase was made. A presumption of resulting trust arises only when the purchase is made in the name of a person who is in equity a stranger to the real purchaser. If the purchase is made in the name of a person who is not in equity a stranger to the real purchaser, such as his wife or child, then a presumption of gift, called a presumption of advancement, arises in favour of the nominal purchaser and so the real purchaser can establish a resulting trust in his favour only by evidence of his actual intention rebutting the presumption of advancement”

Wylie's Irish Land Law (3<sup>rd</sup> edition) at paragraphs 9.046-9.047 confirms that the principles stated above apply in Northern Ireland.

[15] In the present case the relationship of father and daughter gives rise to a presumption of gift by the plaintiff to the defendant. That presumption can be rebutted if the plaintiff proves that it was not a gift, in which case there will be resulting trust to the plaintiff.

[16] There is a conflict of evidence between the plaintiff and the defendant as to the arrangements made in relation to the purchase of the property and as to what was said at the time of this transaction. The plaintiff asked why he should favour one of his four children with such a gift. The defendant's answer was that the plaintiff made a substantial wedding gift to a daughter, and a further house in Omeath, paid for by the plaintiff was in the name of the plaintiff's older son. The gift to the daughter was made on the occasion of her wedding in circumstances arising out of the difficult circumstances that had developed from the plaintiff's second marriage and I am satisfied that the making of that wedding gift does not indicate any basis on which the plaintiff might have made a gift of the property in question to the defendant. The plaintiff denied that he had any interest in any further property in Omeath and I am not satisfied on the evidence that the plaintiff or his older son have an interest in any such property. Not being satisfied as to any reason for the plaintiff to make a gift to the defendant rather than any of his other children I find that to be a point in favour of the plaintiff, but it would not rebut the presumption.

[17] The Boyd sisters' evidence was that the defendant stated that the house belonged to the plaintiff. Cathy places this statement at the time when the defendant was moving to Iveagh Street. Roisin did not specify the time of her conversations with the defendant but I conclude from her evidence that the statements were being timed after the purchase was made.

There is an issue as to whether or not statements made after the event, that is, after the purchase, can be used in evidence to support or contradict the case that is being made. Lewin on Trusts at paragraph 9-36 states-

“Subsequent acts and declaration are admissible as evidence against the party who made them, but not in his favour. Thus, in a case involving a presumption of advancement in favour of the child, the subsequent acts

and declarations of the father may be used against him by the child, although they cannot be used in his favour and likewise, the subsequent acts and declarations of the child may be used by the father against him, provided he had knowledge of the material facts, and in such a case his construction of the transaction may be taken as an index of the intention of the father”.

Statements made by the defendant can be used against her even though they were subsequent acts and declarations if they are contrary to her interest. The weight accorded to the evidence is another matter. No reason has been advanced as to why the Boyd sisters should give evidence falsely and I am satisfied that their evidence is what occurred. I find that the defendant did say what she is alleged to have said and I find that to be a significant factor in favour of the plaintiff.

[18] An issue arises as to the possibility of avoidance of the wife’s claim for financial provision in the divorce. The plaintiff did not want his wife to know about this transaction but she did acquire knowledge of the matter. She swore an affidavit in the financial claim in June 1999, a time when the defendant was still in occupation of the premises. In that affidavit at paragraph 4 she sets out her belief that the plaintiff had “ an interest in a property at 56 Iveagh Street, Belfast.”

[19] The plaintiff swore a replying affidavit in November 1999 and he agreed that he did have the beneficial interest in the property when in paragraph 7 of his affidavit he stated:

“As regards the property at 56 Iveagh Street, Belfast, I purchased this property in the name of my daughter. I did this because my daughter was not getting on with her mother, she had developed an eating disorder, I felt it appropriate not only that she should have stability in her living condition which was what she wanted but it would be good for her to have the responsibility of living an independent life. I believe that she would feel more independent if the title in the house were put in her sole name although she and I knew that the reality of the situation was that the house would remain mine”

In effect the plaintiff made the case at that time which he has made for the purposes of the present proceedings, namely that he was the owner of the house and intended to remain the owner of the house.

[20] In relation to the purchase of property for improper purposes, Lewin on Trusts at paragraph 9.37 states-

“Where the purchase was taken in the name of someone other than the true purchaser so as to affect a purpose which was fraudulent or illegal, for example, the evasion of the purchasers’ creditors..... then if the purpose has been carried out a party to it cannot adduce evidence of it if he needs to rely on the improper purpose to establish his beneficial title.”

In relation to cases involving a presumption of advancement it is said:

“Where, however, the improper purpose has not been carried out, evidence of the illegal purchase may be led to rebut the presumption of advancement”

[21] In the present case any impropriety does not concern the putting of the house in the defendant’s name as such, but rather concerns the concealment of the transaction by the plaintiff from his wife. However the wife was not, and will not be, defeated by that non-disclosure because she was aware of the property being in the name of the defendant and yet being property in respect of which her husband had an interest and which she included in her financial claim. Furthermore the plaintiff accepted that he had such an interest and accordingly, if the plaintiff had originally hoped to conceal his interest in the property from his wife, I am not satisfied that there was any improper purpose which was actually carried out.

[22] In Tribe v Tribe [1996] Ch 107 the Court of Appeal in England adopted the approach in Perpetual Executors and Trustees Association of Australia Ltd v Wright [1917] 23 CLR 185 as follows-



“The test appears to be, not whether the plaintiff in such a case relies on the illegal agreement, because in one sense he always does so, but whether the illegal purpose from which the plaintiff insists on retiring still rests in intention only. If either he is seeking to carry out the illegal purpose, or has already carried it out in whole or in part, then he fails”

[23] I find that there was not an illegal purpose and in any event the concealment of the transaction from the plaintiff’s wife was not carried out, and cannot be carried out if its object was to diminish the wife’s financial claim, because the plaintiff in this case maintains his claim to the property which of course exposes the property to the claim by the wife. So the purpose, insofar as it was intended to reduce the wife’s claim in the family proceedings, does not impact on the present proceedings.

[24] The defendant relied on a number of factors which she said, through her counsel, established that the plaintiff could not rebut the presumption of gift.

First, that the defendant had to apply for the grant for the property or else it would have become derelict and this suggested that the defendant had both a legal and a beneficial interest. I am satisfied that the defendant’s application for a grant does not advance her position. She was the legal owner and would be expected to be the applicant for a grant.

Secondly, the plaintiff’s course of dealing with the purchase of property in the past was that he purchased in his own name and not in the name of the daughter. The treatment of other property does not affect or govern the position in the present case. In any event there is an explanation for the plaintiff’s actions in relation to the transaction in question.

Thirdly, it was said that the defendant did not come to the transaction or to the court with clean hands because he sought to reduce his wife’s interest in the financial

claim against the plaintiff. For the reasons given above I do not accept that that is the case.

Fourthly, it is said that the defendant had need of assistance, or so the plaintiff thought at that time, and the plaintiff was seeking to provide that assistance by giving her the house. However, the plaintiff's evidence, which I accept, was that he sought to create stability for the defendant by providing the house in her name and intended the property to be a retirement nest egg.

[25] Accordingly for the reasons that I have set out I am satisfied that the plaintiff has rebutted the presumption of gift and accordingly the defendant holds the property on resulting trust for the plaintiff.

[26] The Order will be a declaration that the plaintiff is entitled to the whole of the beneficial interest in 56 Iveagh Street, Belfast, and in so far as it necessary an order for the transfer of the title to the plaintiff.

5 July 2002.