

IN THE HIGH COURT OF NORTHERN IRELAND

CHANCERY DIVISION (BANKRUPTCY)

RE ANTHONY QUINN
A BANKRUPT

CAMPBELL LJ

[1] Anthony Quinn was adjudged bankrupt on 12 June 1998 on the petition of the Commissioners of Inland Revenue. Four creditors have proved in the bankruptcy and their debts amount to £28,283.24.

[2] Brigid Napier as trustee of his estate has applied for an order for possession and sale of the dwelling house and premises at 20 Back Road, Mullaghbawn, Newry, County Armagh, contained in folio AR18056 and registered in the name of Anthony Quinn and subject to a charge in favour of the Woolwich Building Society.

[3] Mr and Mrs Quinn who were married in 1984 have been separated since August 2000. There are five children of the family, ranging from 6 to 18 years of age, and they all live with their mother at 20 Back Road, Mullaghbawn.

[4] Mrs Quinn is now 35 years of age and after the marriage she and her husband lived in rented accommodation. In 1991 they purchased a property at 4 Poet's Meadow, Mullaghbawn, in their joint names with a mortgage secured by a life insurance policy.

[5] In 1993, when she was 25 years old Mrs Quinn suffered a heart attack and since then she has been on medication. In 1996 they decided to build a house on a site at Back Road Mullaghbawn. The site was purchased in the name of Anthony Quinn with money that he had invested and the cost of construction of the house was paid for with the equity from the sale of Poet's Meadow and an endowment mortgage with the Woolwich Building Society.

[6] Because of her medical history Mrs Quinn was not acceptable as a mortgagor. Her evidence was that she had an understanding with her husband that if a time came when she could meet the medical requirements her name would be added to the title. As she put it "there was never a thing that it was his house or anything like that it was just our home."

[7] The Trustee and Mrs Quinn agree that the value of her direct contributions towards the cost of the house at Back Road is £15,000 consisting of a moiety of the equity on the sale of Poet's Meadow and repayments that she has made to the Woolwich Building Society on foot of the mortgage of her present home.

[8] She does not concede that this figure represents the full extent of her interest in the property at Back Road but for the purposes of the question before the court it is accepted that she has a sufficient interest to allow her to oppose this application.

[9] Article 309 of the Insolvency (NI) Order 1989 provides:

"(1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting of the bankrupt's estate in a trustee) is to be taken as having given rise to any matrimonial home rights under the Family Homes and Domestic Violence (Northern Ireland) Order 1997 in relation to a dwelling house comprised in the bankrupt's estate.

(2) Where a spouse's matrimonial home rights under the Order of 1997 are a charge on the estate or interest of the other spouse, or of trustees for the other spouse, and the other spouse is adjudged bankrupt -

(a) the charge continues to subsist notwithstanding the bankruptcy and subject to the provisions of that Order, binds the trustee of the bankrupt's estate and persons deriving title under that trustee, and

(b) any application for an order under Article 11 of that Order shall be made to the High Court.

(3) Notwithstanding any provision of the Partition Act 1868, where a person and his spouse or former spouse have a legal or equitable estate in a dwelling

house vested in them jointly or as tenants in common and that person is adjudged bankrupt, in a suit for partition maintained by the trustee of the bankrupt's estate the High Court may make such order as it thinks fit.

(4) On an application such as is mentioned in paragraph (2) or in a suit such as is mentioned in paragraph (3) the High Court shall make such order under paragraph (3) or Article 11 of the Order of 1997 as it thinks just and reasonable having regard to -

- (a) the interests of the bankrupt's creditors,
- (b) the conduct of the spouse or former spouse, so far as contributing to the bankruptcy,
- (c) the needs and financial resources of the spouse or former spouse,
- (d) the needs of any children, and
- (e) all the circumstances of the case other than the needs of the bankrupt.

(5) Where such an application is made or such a suit is maintained after the expiration of one year from the first vesting under Chapter IV of the bankrupt's estate in a trustee, the High Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations."

[10] The issue to be decided is what order is just and reasonable having regard to the considerations set out in Article 309(4). Since the application is made after the expiration of one year from vesting of the estate the court is required to assume, unless the circumstances of the case are exceptional, that the interests of the creditors outweigh all other considerations.

[11] Miss Walsh QC who appears with Mr McEwan on behalf of Mrs Quinn has advanced a number of grounds on which she suggests the circumstances should be regarded as exceptional.

- (i) Mrs Quinn is a single parent with ill health that is in part stress related.
- (ii) She is unable to work and she cannot obtain a mortgage
- (iii) Where she is living there is family support available to her which she would not have elsewhere.

- (iv) She has five dependent children whose schools and associates are near where they are living and she is restricted in her choice of accommodation by reason of the size of her family.

[12] With regard to Mrs Quinn's health her own evidence is supported by reports from Professor A.A.J.Adgey, a consultant cardiologist. Professor Adgey says that Mrs Quinn suffered from coronary artery spasm in 1994 in association with cardiac catheterisation. In her opinion the symptoms can be controlled by medication. Although Mrs Quinn suffers from chest pains from time to time and excess anxiety could precipitate chest discomfort, Professor Adgey believes that this should be brought under control by increasing her medication. Mrs Quinn looks after her children but her eldest daughter and a cousin, who lives beside her, assist her by doing the heavier housework. It is clear that Mrs Quinn is fully occupied in looking after her children and it would not be possible for her to work outside the home particularly with her medical condition, even if she had time to do so.

[13] The eldest girl is at technical college and two of the children attend high school in Crossmaglen which is eight or nine miles from their home. The two younger children are at school in Mullaghbawn. The house at Back Road in which they are living provides suitable accommodation for the family with five bedrooms.

[14] Mr Philip Cox an independent financial advisor with Hanna Hillen Financial Services gave evidence that even if Mrs Quinn owned the entire equity in her present home (estimated at £105,000) this would not be sufficient to purchase a house that could accommodate her family. In his opinion though she would be unable to take out an endowment mortgage or to obtain life insurance this would not prevent her from obtaining a mortgage. For example if her disability allowance (which runs to 2004) were for life this would be taken into account by a lending institution in deciding whether to grant a loan.

[15] The senior housing officer with the Housing Executive for the rural area between Crossmaglen and Annalong is Mr Frank McCormick. His evidence was that in the last two years the Executive has allocated four houses from its entire stock of forty- five houses in Mullaghbawn. None of these had five bedrooms. In Forkhill and Silverbridge they have not allocated any houses in the past two years. At present there is no accommodation in the area belonging to the Housing Executive that could be made available to house Mrs Quinn and her children. If she were required to leave her house within twenty-eight days then under the homeless legislation she would attract a number of points that would give her priority. With these points she would have a good chance of obtaining a tenancy of a house in Newry.

[16] Mr Stephen Fisher of the Rural Housing Association gave a similar picture. The Association has twelve houses in Mullaghbawn and six of these have only two bedrooms and they have none with four bedrooms.

[17] Looking at all the circumstances are they exceptional? In *re Citro (A Bankrupt)* [1991] Ch 142 at 157 Nourse LJ having posed the same question remarked;

“As the cases show, it is not uncommon for a wife with young children to be faced with eviction in circumstances where the realisation of her beneficial interest will not produce enough to buy a comparable home in the same neighbourhood, or indeed elsewhere. And, if she has to move elsewhere there may be problems over schooling and so forth. Such circumstances while engendering a natural sympathy in all who hear them, cannot be described as exceptional. They are the melancholy consequences of debt and improvidence with which every civilised society has been familiar.”

[18] A medical or mental condition may provide exceptional circumstances see *Judd v Brown* [1998] 2 FLR 360, *Re DR Raval(a bankrupt)*[1998] 2FLR 718, *Cloughton v Charalamabous* [1998] BPIR 558. The evidence is that excess anxiety could cause Mrs Quinn to suffer chest discomfort, which should be controlled by medication. This additional factor is not in my opinion sufficient to make the particular circumstances of her case exceptional.

[19] Miss Walsh invited the court to hold that interference with the family life and home of Mrs Quinn and her children to protect the rights of creditors would only be proportionate to the aim if the debts were charged on the title to the property.

[20] To make an order for possession is an interference with their home and must be justified under article 8(2) of the Convention. Such an order would be made in accordance with domestic law and is necessary for the protection of the rights and freedoms of others, namely the creditors of the bankrupt. A charge may protect the interests of the creditors but there is nothing to suggest that it would allow them to realise their debts at any time in the foreseeable future. In these circumstances there is a reasonable relationship of proportionality between making an order for possession and the aim of protecting the rights of the creditors.

[21] I take into account the evidence that the Housing Executive could not provide suitable accommodation in the general neighbourhood for Mrs Quinn and her family. It may well take time for Mrs Quinn to find somewhere that is

suitable for them and to make arrangements to minimise disruption to her childrens' education. Because of her medical condition she should have time to do so without being under undue pressure of time. Accordingly the order that I propose to make on the issue before the court would be suspended for a period of nine months.