Neutral Citation: [2018] NICh 30

Ref: **HOR10254**

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

Delivered: **02/02/2018**

2013/55939

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

ULSTER BANK

Plaintiff/Respondent

-and-

SEAN MURPHY

Defendant/Appellant

HORNER J

Introduction

[1] I had originally intended to give an *ex tempore* judgment. However, as this matter has been beset with delay, I thought it better if I provide a reserved judgment at this stage given that it will almost certainly be appealed.

[2] Sean Murphy, a farmer and engineer, who I shall refer to as the appellant, is unrepresented. However he has just recently requested that his appeal(s) be adjourned to allow him to be legally represented. Essentially he seeks to appeal the decision of Master Hardstaff made on 8 March 2016 whereby he granted possession of Folios AR17985, Folio 9283 and Folio 9285 Co Armagh to the Ulster Bank ("the bank"). It claimed to hold the land certificates in respect of those folios by way of equitable deposit.

[3] On 8 March 2016 Master Hardstaff's order included a requirement that the lands comprised in the folios I have referred to above should be sold out of court by private treaty or public auction as the bank might be advised. It also required all necessary parties to join in executing the deed or deeds of transfer of conveyance to the purchaser or purchasers of the said lands. The money arising from such sale was to be applied:

(i) First, in payment of the costs and expenses of the sale.

(ii) Secondly, in payment of the amounts due to encumbrancers (in their proper priority of more than one); and

(iii) The balance, if any, shall be paid to the defendant.

[4] The order also provided that the plaintiff was entitled to its costs of this application when taxed in the same priority as its encumbrance and that the plaintiff should serve a copy of this order upon the defendant by ordinary first class post.

[5] The hearing of this appeal has taken up a disproportionate amount of court time, of my time and most importantly of the time of the staff who administer the Chancery Office. The Office has been bombarded with e-mails, affidavits, unsworn affidavits and other documents from the appellant. Many of the documents submitted are in direct contravention of the directions of the court. There are other cases deserving of a hearing which will have been delayed because of the time spent dealing with this appeal. The court and office staff have been the subject of unreasonable demands by the appellant in respect of provision of assistance. All this is against a background of an appellant who, as I have stated, ignores directions of the court, who fails to turn up or on other occasion turns up late. As King LJ said in Agarwala v Agarwala (2016) EWCA Civ 1252 at para [72]:

> "Whilst every judge is sympathetic to the challenges faced by litigants in person, justice simply cannot be done through a torrent of informal, unfocussed emails, often sent directly to the judge and not to the other parties. Neither the judge nor the court staff can, or should, be expected to field communications of this type. In my view judges must be entitled, as part of their general case management powers, to put in place, where they feel it to be appropriate, strict directions regulating communications with the court and litigants should understand that failure to comply with such directions will mean that communications that they choose to send, notwithstanding those directions, will be neither responded to nor acted upon."

[6] I attach a chronology setting out the progress of this appeal which demonstrates the appellant's approach to this litigation and the appellant's refusal to comply with directions. I also attach the medical certificates, notes and reports relied upon by the appellant which in almost all cases fail to give a diagnosis, a prognosis, an explanation as to why the particular medical condition prevents the appellant from attending either the courthouse in Newry or Belfast or indeed any explanation as to why that condition renders the appellant unable to give evidence. (Those medical notes should not be disclosed except with the leave of this court).

Substitution of another party for the bank

[7] The bank seeks to have Promontoria (Oyster) Designated Activity Company ("Promontoria") substituted for it as the plaintiff/respondent at the hearing of this appeal, which is a rehearing. There is an affidavit from Mr Donal O'Sullivan, Director of Promontoria which demonstrates that the bank executed a double deed of transfer which "unconditionally, irrevocably and absolutely granted, conveyed, signed, transferred and assured to Promontoria as buyer insofar as not otherwise granted, conveyed, signed, transferred and assured pursuant to the Deed of Transfer, all such rights, title and interests a seller may have to the defendant's facilities and security documents. … It is important to note that Promontoria will take subject to any equities that the appellant has in the lands."

[8] I note the following:

(a) Fisher and Lightwood's Law of Mortgage (14th Edition) at 24.1 states:

> "A mortgagee is entitled to transfer his security either absolutely or by way of sub-mortgagee and, in general, with or without the consent of the mortgagor."

(b) At 24.5 Fisher and Lightwood's Law of Mortgage deals with the transfer of an equitable mortgage. In England, this is now subject to the Law of Property (Miscellaneous Provisions) Act 1989, which does not apply in this jurisdiction. At 24.5 the text states:

> "Formerly, delivery of the deeds was sufficient …"

(c) The provisions of the "old" law in England and Wales (before the Law of Property (Miscellaneous Provisions) Act 1989) still applies in this jurisdiction.

(d) I refer also to O'Neill on the Law of Mortgages in Northern Ireland at page 1112 where he states:

> "A lender may transfer its interest in a mortgage or charge to a third party at any time during the currency of the mortgage. Indeed, it is relatively common for major financial institutions to sell their interests … to a third party. The lender may either transfer the debt owed by the borrower to it or its security interests in the mortgage or charged property or both. This applies to both legal mortgages

> and charges and equitable mortgages and charges."

[9] In the circumstances, I am satisfied that it is proper and appropriate that I make the order substituting Promontoria ("the respondent") for the bank on this appeal and rehearing given the Deed of Transfer dated 9 December 2016.

Appeal - The merits

[10] The appellant issued a notice of appeal on 18 March 2016 appealing the decision of Master Hardstaff with a set aside application. I should also note that this notice of appeal, any other notices of appeal in respect of this order and any set aside application in respect of this order are out of time. I do not propose to set out the progress of the proceedings in this matter from when the originating summons was issued on 29 May 2013 to date because this is clearly demonstrated by the chronology which is appended to this judgment. I do note that there have been a number of notices of appeal in respect of the Master's orders and also to set aside applications. I also draw attention to the fact that on 3 May 2016 the appellant's trustee in bankruptcy, the appellant being an undischarged bankrupt at that time, confirmed that he had no objection to the bank being "granted a possession order in respect of these folios."

[11] I pause at this point to observe that the issue of these various notices of appeals and applications to set aside by the appellant can be and are confusing. I am satisfied this is the very intention of the appellant. I also consider it significant that some of his applications are in a handwriting which can be difficult to read, although he has access to a word processor. I am satisfied that it is the intention of the appellant to cause as much confusion as possible. This confusion increases when either the appellant fails to appear or chooses to arrive late for a scheduled court hearing. These are matters which I will return to later in this judgment. In any event, it is clear beyond any doubt that any notice to appeal or set aside of the original order of Master Hardstaff is now out of time. Order 58 Rule 1(3) of the Rules of the Supreme Court (Northern Ireland) 1980 provides:

> "Unless the court otherwise orders, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and served not less than two clear days before the day fixed for hearing the appeal."

He is also out of time in respect of any application to set aside that order. He therefore requires a court to exercise its discretion and to extend the time permitted for an appeal from this order of the Master.

[12] The appeal(s) against the order of Master Hardstaff came on for hearing before me on a substantive basis on 20 February 2017. After a hearing on the merits

the court received a substantial request for disclosure of a large volume of documents allegedly held by the bank. No application had been made to me before the hearing although the case had been managed on a number of different occasions. It is true to say that the appellant did not always appear for various reasons and when he did appear, it was rarely on time. However, he had ample opportunity to raise the issue of disclosure before the hearing and he chose not to do so. He also had an opportunity at that time to ask for time to instruct a legal team to conduct his appeal. No request was made. I am satisfied that this was a deliberate decision made by the appellant. Case management hearings fulfil an important function. A litigant treats them in a cavalier fashion at his peril regardless of whether or not that party is legally represented. Having considered the application, I did not consider that the appellant had persuaded the court that disclosure of these documents satisfied the test under Order 24 Rule 9, namely that discovery was necessary either for disposing fairly of the cause or matter or for saving costs. Nor was it proportionate given the issues and the amount of money at stake. In fact, I am satisfied that the late application for full scale disclosure was made primarily to try and delay the proceedings further. However, there were two issues which I considered required further investigation in accordance with the overriding objective of Order 1 Rule 1A, which would enable the court to deal justly with the claims made by the appellant. This is because they were the grounds the appellant primarily relied upon to defeat the respondent's application for possession. I therefore ordered that the bank should make disclosure on two discrete issues. Firstly, they would disclose any documents where the appellant had challenged the bank's claim in Facility Letters issued to the appellant where the bank had alleged that the lands comprised in the three folios were held by way of security. Secondly, the bank was to provide disclosure of all documents relating to the claim now made by the appellant that the only security that the bank had for its indebtedness was a permanent health insurance policy with Friends Provident and/or a life policy with Scottish Provident or some other insurer.

[13] The bank has filed further affidavits dealing with both these two discrete issues. The appellant has filed further lengthy affidavits, both sworn and unsworn, which range far and wide and attempt to ignore the order I made. However, I conclude that there is no reliable documentary evidence that:

(i) The appellant has never challenged the bank's claim that it held the land certificates as security for the bank for the appellant's indebtedness. It is inconceivable that this appellant would ever let any lender claim a security over property if that had not been agreed with him.

(ii) Secondly, there is no documentary evidence at all that any policy whether a life policy or a permanent health insurance policy was ever intended to provide security for the appellant's indebtedness never mind that such a policy or policies were to be in substitution for the deposit of the land certificates as security for such debt.

In other words the case made by the appellant at this appeal is not supported by any cogent documentary evidence at all. Furthermore it is contradicted by the terms of the facility letters sent to the appellant by the bank and which the appellant did not protest.

[14] The further evidence now available following the original hearing has demonstrated beyond peradventure that the appellant made no case at any time against the bank whether in writing or orally that it did not hold the land certificates as it claimed in the facility letters as security for the appellant's debts. This must be viewed in the context of a customer like the appellant who, I find, would have no hesitation in challenging a claim by any bank that it held its property as security for his indebtedness when there had been no such agreement that the property should be so held. The appellant has amply demonstrated that he is more than willing to take up cudgels against the bank if he disagrees with its stance.

[15] In respect of the permanent health insurance policy or the life policy, no policy has been made available and the bank does not retain such a policy or have a copy of it. Furthermore, the bank does not claim any such policy as a security for the defendant's indebtedness. However, even if the appellant's case is taken on the basis that he did mortgage a PHI policy and/or a life policy to secure his indebtedness (and for which there is no evidence) the defendant's position is no way improved. The bank can then choose which security to enforce and whether to enforce collateral securities at the same time: see 24.15 and 25.16 of Cousins on the Law of Mortgage. Further, White v Davenham Trust Limited [2011] EWCA Civ 747 and China and South Sea Bank v Tan [1990] AC 536 are authorities for the proposition that a creditor such a bank may choose which security to pursue: see Lord Templeman at page 59 of China and South Sea Bank v Tan. There is not a shred of evidence that the deposit of any PHI policy or life cover policy was to replace the deposit of the land certificates. Again, if this had of been agreed, then it is probable that there would have been evidence of objections from the appellant to the terms of facility letters he received.

[16] On the basis of the evidence before this court the appellant had deposited Folios AR117985, 9283 and 9285 Co Armagh as security for his indebtedness and in particular in respect of the joint current account ****0076, sole account ****3096 and ****7083. The bank holds the title deeds as security and this is demonstrated by the notice of deposit and the various facility letters which the bank had issued and sent to the appellant over the years without any objection from the appellant. I also accept the statement of the law in Wylie's Irish Land Law at 12.44 which states:

> "It appears that a mere deposit of the title deeds will be regarded as prima facie evidence of an equitable mortgage, unless the deposit is otherwise accounted for e.g. deposit with a bank for safekeeping."

[17] No other satisfactory explanation for the deposit of title deeds has been forthcoming from the appellant. I am satisfied they were deposited to secure the appellant's indebtedness.

[18] Further, the appellant is clearly indebted to the bank and is in breach of the terms of lending. In the circumstance the Master was justified in making the order he did. Accordingly, the appeal is without any merit. The only issue is what sum is now due and owing and is secured by the deposit of the land certificates.

Delay

[19] It is perhaps appropriate that I should say something about the delay in this case. The original hearing before the Master was on 8 March 2016, some 22 months ago. I heard the substantive appeal on 20 February 2017 some 11 months later. Almost another year has passed. Indeed the appellant wants to delay the delivery of this judgment further. The reasons for this quite unreasonable delay lie almost exclusively with the appellant. There are occasions when he has not attended court, sometimes, but not always, because he was in prison. He sought to blame his wife for his incarceration claiming, inter alia, that she had made false accusations against him due to her mental condition. I obtained a copy of the sentencing remarks of Her Honour Judge Crawford, which I have appended to this judgment (Appendix A), which contradict the excuses and explanations of the appellant and which portray him as a devious, scheming and manipulative person who tried to intimidate his wife causing her fear and upset and in respect of whom the trial judge commented:

> "While there is no medical evidence before the court of psychological harm, Mrs Murphy's presentation in giving evidence manifested very clearly to the court her vulnerability and the fear and distress that she has suffered."

This appellant's unsuccessful attempts to blame his wife for his period of imprisonment both before Her Honour Judge Crawford and before this court reflect poorly and cast further doubt on his reliability as a historian. It is difficult not to conclude that the truth and the appellant are uneasy bedfellows.

[20] I also note that the trial judge had to issue a bench warrant because of his failure to attend court and that there were also repeated adjournments primarily due to his change of solicitors. Before this court there has been a studied refusal to cooperate. The court, perhaps unwisely, has sought to facilitate the appellant because he has not been represented. This generosity has not been reciprocated by the appellant. For example, he refused to attend court during the latter part of December because he was on leave over Christmas until 8 January 2018. This is all too typical of the appellant's attitude. Unfortunately matters were taken out of this court's hands before Christmas when the appellant was again arrested and imprisoned so preventing his appearance before this court on 19 December 2017 to

explain his wholly unreasonable attitude. It was then not possible to arrange a video link from Maghaberry Prison on 12 January 2018.

[21] On 18 January he was advised that he was required to provide a medical report explaining precisely why he was prevented from attending Belfast or Newry Courthouse and when he would be fit to do so. No report has been received which fulfils the necessary criteria. I have attached the sick notes and medical reports to this judgment, which remain confidential and are primarily for the benefit of the Court of Appeal.

[22] Should a legal representative have displayed the discourtesy to the court exhibited by the appellant, that representative would have undoubtedly been reported to his professional body for misconduct. The appellant's behaviour has been unacceptable and it is irrelevant that he is unrepresented. It is difficult not to conclude that the appellant had embarked on a deliberate policy of trying to manipulate the court process to his own advantage. I had made it clear that it would have to stop and that I was determined to give judgment before the end of Michaelmas Term. But I was unable to do so. I still do not have reliable evidence about the appellant's alleged medical problems and why they have prevented him from attending court either in Belfast or Newry.

Extending time for appeal

[23] For the reasons which I set out, I consider that the appellant's appeal is without merit. I have set out my reasons on the merits as it is inevitable that the appellant will appeal as that appears to be his modus operandi. However there are two other matters that do require careful consideration at the outset and these provide a complete defence to the present appeal(s). Firstly, the appeal(s) (and any application to set aside) are out of time. No explanation whatsoever has been offered by the appellant as to why he did not appeal within the time provided the Rules of the Supreme Court (Northern Ireland) 1980 ("the Rules").

[24] In Davis v Northern Ireland Carriers [1979] NI 19 Lowry LCJ set out what were the principles to be applied in relation to an application to extend time for an appeal. At page 20A-D he said:

> "Where a time limit is imposed by statute it cannot be extended unless that or another statute contains a dispensing power. Where the time is imposed by rules of court which embody a dispensing power such as is that found in Order 64 rule 7 the court must exercise its discretion in each case and for that purpose the relevant principles are –

(1) whether the time is expired: a court will, where the reason is a good one, look more favourably on an application made before the time is up;

(2) when the time-limit has expired, the extent to which the party applying is in default;

(3) the effect on the opposite party of granting the application and, in particular, whether he can be compensated by costs;

(4) whether a hearing of the merits has taken place or would be denied by refusing an extension;

(5) whether there is a point of substance (which in effect means a legal point of substance when dealing with cases stated) which could not otherwise be put forward; and

(6) whether the point is of general and not merely particular, significance.

To these I add the important principle:

(7) that the rules of court are there to be observed."

[25] In the instant case:

(a) time was expired and no good reasons had been offered as to why the appeal was not made within the time limit provided by the Rules;

(b) no explanation explaining the delay has been offered to the court;

(c) it is unlikely that the delay can be compensated in costs. It must be doubtful whether any of the additional costs could be recovered from the appellant;

(d) a hearing on the merits has taken place;

(e) there is no point of substance to be argued, whether or general or particular significance. Indeed, the appeal is without apparent merit, legal or factual.

[26] The fact that the defendant is a personal litigant is no excuse. In Mary Bernadette Magill v The Ulster Independent Clinic and Others [2010] NICA 33 Girvan LJ giving the judgment of the court at paragraph 16 said:

> "Mrs Magill also emphasised that as a personal litigant she was at a disadvantage compared to litigants professionally represented and the submission appeared to suggest that that fact should in some way ease her task in seeking an extension or resisting an order for security. On her own case she did take advice about a potential appeal but irrespective of that fact, a personal litigant cannot have an unfair advantage against represented parties by seeking to rely on inexperience or a lack of proper appreciation of what the law requires. The application of legal principles poses a duty on the court to examine cases objectively without fear or favour to any party, represented or unrepresented. While courts are conscious of the difficulties faced by a personal litigant representing herself and will strive to enable that person to present her case as well as they can, the dictates of objective fairness and justice preclude the court from in any way distorting the rules or the requirements of due process because one party is unrepresented."

[27] The appellant must realise that there is one set of rules. These must be observed by all litigants whether represented or unrepresented. I refuse to extend time for leave to appeal in respect of any of the notices of appeal or any application to set aside the Master's order. There is not and cannot be a set of rules with more lenient standards which applies to personal litigants. This court has bent over backwards to facilitate the appellant but this has not been reciprocated.

Locus standi

[28] Further, it was drawn to my attention that the appeal came on for hearing that the appellant had been made bankrupt and that his trustee in bankruptcy was Ken Petullo. The trustee in bankruptcy:

(a) did not object to the bank obtaining possession of the three folios in dispute; and

(b) disclaimed the appeal.

[29] I have considered the arguments advanced by Mr Sinton on behalf of the respondent. I accept that the appellant has no entitlement to appeal. He has no

locus standi. Any cause of action and any right of appeal vested in his trustee in bankruptcy who decided not to appeal and who has disclaimed the notice of appeal, e.g. see Swift Advances v McKay and others [2011] NICh 2. The mortgage is an equitable one of agricultural lands only and does not include a house. A ruined cottage, which apparently exists on one of the folios, is not excluded from those assets which vest in the Trustee in Bankruptcy. The same applies, mutatis mutandis, to any life insurance policy or permanent health insurance policy. In the circumstances, I conclude that the applicant is not able to avail of any exception under the law. So regardless of issues of merit or of time, the appellant's appeal must fail in limine.

Conclusion

[30] For all those reasons I affirm the order of the Master but vary it in respect of the indebtedness which is presently secured. There is no point in asking the parties to agree the up to date position in respect of the appellant's indebtedness. The respondent should file an affidavit setting out the total indebtedness of the appellant as of 7 February 2018 by lunchtime on 5 February 2018. The appellant can challenge this calculation on or before close of business on 6 February 2018. The final order will issue on 7 February 2018.

[31] I will now invite the parties to make written submissions on the issue of costs, given the delay to date. Each side has seven days to make written representations from today, time being of the essence.

CHRONOLOGY

29 May 2013	Originating Summons issued under Order 88
12 September 2013	Affidavit of Alexander McBride
26 September 2013	Notice of hearing of Originating Summons
2 February 2015	First Order for Possession (appellant not in attendance on this date). This Order was **set aside** by the Master.
20 February 2015	1st affidavit of defendant
23 February 2015	2nd affidavit of defendant
20 March 2015	3rd affidavit of defendant
29 April 2015	Bankruptcy Petition presented against defendant
24 August 2015	Deeny J dismisses appeal by defendant against refusal to set aside Statutory Demand
2 September 2015	Defendant adjudged Bankrupt
22 December 2015	Rejoinder affidavit of David McCallum
26 January 2016	Master Bell dismisses Action commenced by defendant (bankrupt) against Alan McIlmoyle
8 February 2016	4th affidavit of defendant
23 February 2016	Kenneth Pattullo appointed Trustee in Bankruptcy.
8 March 2016	Order for Possession of Master (appellant not in attendance at Court).
18 March 2016	- Notice of Appeal 1 - Set aside application to Master
3 May 2016	Trustee in Bankruptcy confirms "I have no objection to the Bank being granted a possession order in respect of these folios"

6 May 2016	- Notice of Appeal 1 dismissed by Horner J - No attendance by defendant at hearing.
13 May 2016	- Notice of Appeal 1 re-listed before Horner J - Defendant indicated to Court office he would withdraw his appeal. Costs awarded to plaintiff.
27 May 2016	- Mention before Chancery Master of set aside application
31 May 2016	- Hearing before Horner J regarding costs of Notice of Appeal 1
17 June 2016	- Hearing before Chancery Master. Stay and "set aside" applications adjourned to 28 June 2016
27 June 2016	Court of Appeal dismiss defendant's application to set aside Order of Deeny J dated 7 December 2015
30 June 2016	Court of Appeal affirms its Order of 27 June 2016
28 June 2016	- Hearing before Chancery Master. Appellant in attendance. - Defendant's applications dismissed and Order stayed to 5 August 2016.
4 July 2016	- Affidavit of defendant: requests Master's decision of 28 June 2016 be "set aside" - Notice of Appeal 2
15 September 2016	Hearing before Chancery Master. Defendant's application dismissed.
26 September 2016	- Review before Horner J, regarding costs of withdrawn Notice of Appeal 1.

28 September 2016	- Notice of Appeal 3 issued. Appeal of decisions of Master on 8 March and 15 September 2016. - Simmons to "stay/set-aside" the Order of 8 March 2016
13 December 2016	Kenneth Pattullo (trustee in bankruptcy) disclaims interest in Notice of Appeal of 18 March 2016 & 4 July 2016
19 December 2016	Deed of Transfer: Ulster Bank to Promontoria
26 January 2017	- Horner J peremptorily adjourns Appeals to be heard on 20 February. Appellant indicates he is going to instruct Napiers Solicitors. - Respondent's Solicitors send Trial Bundle to Napiers (who never come on record).
20 February 2017	- Appeals heard substantively by Horner J - Directions given as to filing of affidavits by plaintiff.
8 March 2017	Affidavits of: - Philip McNeill - David McCallum
19 May 2017	Replying affidavit of defendant/appellant
27 June 2017	Application to substitute plaintiff issued
5 July 2017	Further hearing before Horner J & return date of summons to substitute plaintiff
19 July 2017	Appeals listed before Horner J. Appellant in custody and not in attendance.
25 August 2017	Appeals listed before Horner J. Adjourned.

15 September 2017	Date by which appellant was to have filed affidavits [not complied with].
6 November 2017	Concluding hearing (peremptorily adjourned)
20 November 2017	Appellant's affidavits due (dealing with 2 specific issues).
30 November 2017	- Appeals listed for final determination. - Appellant does not attend: adjourned to 6 December 2017. - Appellant told to file medical **report.**
6 December 2017	-Appeals peremptorily adjourned (administratively) to 14 December 2017. - Appellant told to provide a sworn affidavit and exhibits
8 December 2017	Further affidavit of appellant
12 December 2017	Appellant's GP's "Statement of Fitness for Work" in respect of "stress hip and back pain".
13 December 2017	Unsworn and undated document/affidavit submitted without attachments/exhibits.
14 December 2017	Appeals listed (adjourned) No appearance from the appellant but letter from Doctor claiming he had flu symptoms.
18 December 2017	Further affidavit (dated 8 December) submitted by appellant
19 December 2017	Appeals listed before Horner J. Appeal adjourned for judgment on 21 December 2017. The appellant claimed he was on a Christmas break and would not be available until 08 January 2018.
20 December 2017	Affidavit of Brian Cole dealing with balances due to respondent / Promontoria (Oyster) DAC.
21 December 2017	Mention of Appeals before Horner J. The judgment has to be adjourned

	because the appellant had been sent to prison on 20 December 2017 for four months.
12 January 2018	Appeals listed for judgment (adjourned)
18 January 2018	Case relisted for judgment because appellant now out of prison but claims he cannot attend hearing on 19 January 2018 because he is suffering from flu.
19 January 2018	- Appellant "re-submits" affidavit sworn on 19 May 2017, but with different exhibits. - Appeals listed for judgment (adjourned) - Judgment postponed.
22 January 2018	Unsworn document submitted by appellant. An email stating legal consultation arranged for 25 January 2018 accompanied by a medical certificate which was attached "statement of fitness to work" dated 09 January 2018 which stated the appellant was "unfit to work for 2 months".
23 January 2018	- Further unsworn document emailed by appellant - Appeals listed before Horner J for judgment. - Appeal and delivery of judgment adjourned until 01 February 2018. - The appellant then appeared in Newry courthouse @11.11 am after hearing at RCJ was over.
01 February 2018	Judgment adjourned until 02 February 2018

Appendix A

R

V

SEAN MURPHY

Sentencing Remarks

Newry Crown Court Sitting in Belfast

20th September 2017

Crawford HHJ

You are before this court to be sentenced on the 8th count on the bill of indictment of Harassment contrary to Article 4(1) of the Protection from Harassment (Northern Ireland) Order 1997. The particulars of the offence are that on dates between 27th January 2016 and 22nd March 2016 in contravention of Article 3 of the Protection from Harassment (NI) Order 1997 you pursued a course of conduct which amounted to harassment of your estranged wife, Caroline Murphy.

You were arraigned on 17th November 2016 when you entered pleas of not guilty to all of the counts on the indictment. On 12 January 2017, the second day of the trial, after Caroline Murphy had given evidence in chief and just as her cross examination was underway, you applied to the court to be re arraigned. You entered a plea which was not accepted by the court.

You were allowed time to consult with your representatives, following which you entered a plea of guilty to this count. Counts 1-7, which each dealt with breach of a restraining order, were left on the books not to be proceeded with without the leave of this court or the Court of Appeal.

There followed an application to vacate your plea of guilty which application was adjourned repeatedly, primarily because of your change of solicitors from McCoy Steele to Trevor Smyth and finally to GR Ingram and counsel from Mr Conor Maguire to Mr Denis Boyd and finally to Mr Barry Gibson.

The application in respect of your plea was refused in June, at the request of your counsel the court directed an addendum pre-sentence report and the plea was listed on 8th September 2017. You failed to attend on that date and bench warrant was issued.

The court heard the plea on 18th September and adjourned sentencing until today.

Background

On 27/4/15 the County Court made a Restraining Order against you which prohibited you from harassing Caroline Murphy. It took effect from 27/4/15 until

7/5/16. The charge to which you have pleaded guilty arises from your conduct on 28th January 2016 regarding a text message and 6th, 7th, 13th 17th and 20th March when you were observed by Mrs Murphy parked near to her home and 21st March 2016 when Mrs Murphy encountered you in Newry whilst walking from her solicitor's office and again whilst walking to the courthouse.

The court heard evidence from Mrs Margaret Casey, Caroline Murphy's solicitor, about the incident on 21st March and she described that the fear and upset caused to CM on that date by your actions was such that she enlisted the assistance of the police.

The court heard from Caroline Murphy regarding the 5 occasions that your car was outside her house as well as the events of 21st March 2016. She gave evidence as to the harassment and intimidation she suffered as a result of your actions. Whilst there is no medical evidence before the court of psychological harm, Mrs Murphy's presentation in giving evidence manifested very clearly to the court her vulnerability and the fear and distress that she has suffered.

Record

Your criminal record is made up largely of offending related to breach of orders concerning Caroline Murphy. Breaches of a non-molestation order occurred on 26/2/14, 9/03/14, 15/03/14 and on 7/6/14. You were sentenced in respect of these 4 offences on 7/11/ 14 and received a 4 month prison sentence suspended for 18th months, concurrent on each. You committed a further offence of breach of a non-molestation order on 23/05/15 and again on 3/07/15 for which you were sentenced on 10th August 2015 to 4 months' imprisonment concurrent on each. The court also sentenced you to 4 months' imprisonment for breach of the suspended sentence to run consecutively. On appeal the sentences were reduced to 2 months imprisonment, to run concurrently.

You were before the court again for breach of a non-molestation order on 16/10/15 and on 7/11/16. These matters are not taken into consideration by this court as these convictions are under appeal.

Pre-Sentence Reports

The court has received and considered 2 pre-sentence reports.

You are now 59 years of age. You are a qualified chartered engineer and between 1986 and 2015 you worked in that capacity. You work presently on the family farm which you inherited in 1987 and are currently in receipt of Working Tax Credits.

You do not suffer from any significant health problems. You were referred for a psychiatric assessment in 2015 as a consequence of stress associated with your marital breakdown. You do not have any issues with alcohol or drugs.

Offence analysis

The author of the report noted that you presented as being in denial that the marital relationship was over.

You maintained a denial of your offending, saying that you had no malicious intent towards your wife and projecting blame for these incidents onto Caroline Murphy due to her alleged poor mental health and paranoia.

You accepted no responsibility for your actions, you minimised your wife's suffering and showed no remorse.

You are assessed as presenting a high likelihood of re-offending. The factors informing this assessment include:

- The recent pattern of similar convictions
- Your failure to take responsibility for your actions and your minimising the impact on the victim
- The absence of any remorse or insight regarding your behavior.

The probation officer comments that your behaviour suggests a high degree of malicious intent and disregard for the court's efforts to protect the victim from further harm.

The July addendum report notes various courses which you reported having attended including counselling sessions with a marriage care service between September 2014 and March 2015 as well as courses on Practical Philosophy between 2015 and 2017. You asserted that as a result of these studies you are highly empathetic.

However, there was no change in your attitude to your offending.

The report author notes that your criminal record is defined by your response to the breakdown of your marriage and that until you start to recognise the harm your behaviour causes, you will not reduce your high likelihood of reoffending within the next 2 years.

In these reports, the probation officer recognises the likelihood of a custodial sentence, commenting, "The court will show limited tolerance for persistent domestic related offending. And clearly an aggravating aspect of this case is Mr Murphy's wilful disregard for court orders which are designed to protect the victim and manage risk."

The reports state that should the court not impose an immediate custodial sentence, you are not considered as suited to any form of probation due to your attitude towards your offending, but would be able to undertake Community Service.

Guidelines

There are no guideline judgments in this jurisdiction in respect of this offence. On indictment, the offence carries a maximum of 2 years imprisonment. The court was referred to the Magistrates' Courts Guideline for the offence in respect of aggravating and mitigating factors.

Aggravating Factors

These are:

- Your relationship with the victim to whom you were married for some 35 years, and the calculated nature of the harassment. You were bound to know that your conduct would cause considerable distress to your former wife;

- The offending behaviour occurred mainly at or near to the victim's home, a place where she is entitled to feel safe and free from fear and intimidation.

- Your record, which demonstrates wilful and persistent breaches of court orders and a failure to respond to previous disposals of the court, including a suspended sentence and a period of custody in respect of similar offending involving the same victim.

Mitigating Factors

The court had the benefit of a skilful plea from Mr Gibson on your behalf. He highlighted your family circumstances. You have 5 children, 4 of whom are adults and the youngest is 15 years of age and resides with his mother. You are said to have considerable and immediate responsibilities regarding not only the welfare of livestock, but also the management of the farm generally. The court received documentation from a veterinary surgeon in this regard. You struggle to accept the breakdown of your marriage and your offending has, as the PO states, been defined by this event. The court from Mr Gibson that this breakdown has had a profound impact on you to the extent that, having previously had a more or less blameless life, you are now in custody and in the course of these proceedings have spent considerable periods in prison.

Mr Gibson asked the court to take account of the time spent in custody, a period of 12 weeks. He submitted that you are thereby time served. Alternatively, bearing in mind the time in custody to date, the absence of offending since the commission of this offence and the pressing responsibilities concerning animal welfare, he submitted that the court should consider a disposal that would leave something hanging over your head or a community service order.

The principal mitigating factor is your plea of guilty whereby the victim was spared cross examination and there was a saving on court time and expenditure.

However, the late stage of the plea and the subsequent application to vacate limit the credit that would otherwise arise.

Sentence

Taking into account all of your circumstances and the circumstances of this offence, including all of the mitigating and aggravating factors, I am satisfied that the custody threshold is met. On a contest I would have imposed a sentence of imprisonment of 9 months. By your plea you have earned some credit and I reduce this to a period of 7 and a half months.

Your counsel asked that the court consider the suspension of this sentence for the reasons outlined. I do not accept, given your record of offending concerning your wife which dates back to early 2014, your previous failure to respond to court orders, including the breach of a suspended sentence and your attitude towards the current offending, that there is any basis for the court to suspend this sentence. I therefore sentence you to period of 7 and a half months imprisonment.

Restraining Order

The prosecution has asked the court to impose a restraining order in the same terms as that imposed by the County Court in 2015. This is an application under Article 7 of the Protection from Harassment Order. I am satisfied that for the purpose of protecting Caroline Murphy from harassment it is necessary to impose such an order. Given the protracted history of such and similar conduct as outlined in your record, I am satisfied that this order should remain in place for a period of 2 years.

The Restraining Order I impose is: (read out earlier order)

This order will commence from today and continue for a period of 2 years.

Offenders levy