COURT OF APPEAL

UNAPPROVED

Neutral Citation Number [2021] IECA 97
Court of Appeal Record No. 2019/455
High Court Record No. 2018/ 4803 P

Costello J.

Collins J.

MacGrath J.

BETWEEN

MAJELLA RIPPINGTON

PLAINTIFF/APPELLANT

-AND-

IRELAND AND THE ATTORNEY GENERAL, PRINCIPAL PROBATE REGISTRY, THE LAW SOCIETY OF IRELAND, MURRAY FLYNN MAGUIRE SOLICITORS, SIGHLE DUFFY, ANNE STEPHENSON PRACTICING UNDER THE STYLE AND TITLE OF STEPHENSON SOLICITORS, UNA MCGURK, PETER MAGUIRE, DOMINIC HUSSEY AND RITA CONSIDINE

DEFENDANTS/RESPONDENTS

JUDGMENT of Mr. Justice MacGrath delivered on the 30th day of March 2021.

1. This is the plaintiff/appellant, Ms. Rippington's, appeal against orders of Simons J. striking out her claim against the fifth, sixth, seventh, ninth and eleventh defendants as being an abuse of process, being frivolous and vexatious and as failing to disclose a cause of action. In doing so he awarded costs on a measured basis against Ms Rippington. Certain issues arise concerning the nature and permissible extent of the appeal which are considered below.

2. On 25th May 2018, Ms Rippington issued a plenary summons against the defendants claiming damages for professional negligence, breach of statutory and fiduciary duty, breach of constitutional rights and fair procedures and breach of contract. She also claims damages for fraud, misrepresentation, deception, detinue, conversion and what is pleaded as malicious vilification. All such claims have been refuted by the defendants in affidavits sworn in support of their respective applications.

3. By notice of motion dated the 10th July, 2018, the fifth and sixth defendants made application to strike out the proceedings by reason of the failure to deliver a statement of claim, as being frivolous and vexatious and as disclosing no cause of action. They also sought orders restraining the plaintiff from instituting proceedings against them without the prior leave of the President of the High Court; known as an *Isaac Wunder* order. A statement of claim was delivered on 3rd September 2018. By notice dated 18th October 2018, the proceedings were discontinued against the first to fourth and the tenth named defendants. The seventh named defendant issued his motion to dismiss the proceedings as disclosing no cause of action and as being frivolous and vexatious on the on 25th October, 2018. The ninth and eleventh defendants issued similar motions on the 30th October 2018 and 31st October, 2018, respectively.

4. The genesis of these proceedings arises from a dispute in relation to the estate of the late Celine Murphy, sister of Ms Rippington, who died on the 15th March, 2011. One week earlier, on the 8th March, 2011, she made her last will and testament leaving her estate to Ms Mary Butler and naming Bishop Michael Cox as executor. Ms. Rippington's mother, Catherine, died testate later that month on the 25th March 2011. Under the terms of her will the late Catherine Murphy's estate fell to be divided equally between her children, including Ms. Rippington.

5. Ms. Rippington was dissatisfied with the circumstances surrounding the making of her late sister's will. Proceedings to challenge that will were instituted in 2011 by herself, her

husband and her sister - *Rippington v. Cox,* (Record Number 2011/8319P). For ease of reference, these are described herein as the "probate proceedings". Ultimately, the probate proceedings were dismissed by the High Court, which dismissal was upheld on appeal to this Court. In 2012, while the probate proceedings were in being, application was brought pursuant to the provisions of the Succession Act, 1965, s.27, by the executor named in the late Celine Murphy's will for liberty to extract a grant to the estate, *pendente lite.* When that application came before the High Court on 23rd July 2012, O'Neill J granted liberty to Ms Anne Stephenson, solicitor, to extract a grant. For ease of reference this is referred to as the "order of O'Neill J". The manner in which this application was dealt with is also a cause of continuing complaint by Ms Rippington.

6. Ms Rippington's unhappiness with the circumstances of the execution of her late sister's will and the manner in which the order of O'Neill J was made may be said to be central to the multiplicity of litigation and court applications which followed. The continuing defendants in these proceedings were involved in, or represented parties to, those applications and proceedings in one capacity or another. For a proper understanding of the nature of the claims now made it is necessary, at least to some extent, to re-visit the history of such litigation which was the subject of detailed consideration in the judgment of Simons J delivered on the 24th May 2019.

The Probate Proceedings

7. On 16th September, 2011, Ms Rippingon, her husband, Shaun Rippington (the executor of the estate of Catherine Murphy), and Ms Rippington's sister, Edel Banahan, instituted proceedings against Bishop Michael Cox and Ms. Mary Butler, seeking an order condemning the late Celine Murphy's will. It was claimed that the deceased was not of sound disposing mind, that the will was improvident and unconscionable and that the execution of the will had been procured by the undue influence of the defendants.

8. On 30th July, 2015 Noonan J. dismissed the claim and admitted the will to probate in solemn form of law (*Rippington v. Cox* [2015] IEHC 516). Ms. Rippington appealed the dismissal by notice dated 24th August, 2015. The appeal was dismissed on 19th December, 2017 (*Rippington v. Cox* [2017] IECA 331, Ryan P., Peart and Whelan JJ).

The order of O'Neill J.

9. The named executor of Celine Murphy's estate made application pursuant to the Succession Act, 1967, s. 27, to be appointed as administrator *pendente lite*. Ms Rippington and her co-plaintiffs in the probate proceedings were placed on notice of the application. On, 23rd July 2012, following discussions between counsel, O'Neill J. made an order giving Ms. Anne Stephenson, solicitor, liberty to apply for a grant of administration *pendente lite* without will annexed. She was appointment for the purposes of gathering in and preserving the assets of the deceased and paying the deceased's debts, including funeral expenses and a mortgage.

10. Ms. Rippington was dissatisfied with the manner in which the application was dealt with in court. Counsel who represented Ms. Rippington on that application, the ninth defendant in these proceedings, wrote to his instructing solicitor outlining what had occurred both in and outside court and stated that the order was made on consent. In correspondence with her legal team Ms. Rippington informed them that she and her family were intent on appealing the order of O'Neill J. Ms. Rippington's legal team ceased to act for her shortly thereafter.

The application for a stay on the order of O'Neill J.

11. Ms. Rippington applied to the High Court (Hedigan J.) on 8th August, 2012 for an order to place a stay on the order of O'Neill J. This was refused. The appeal from the refusal of Hedigan J. was appealed by notice dated 27th August 2012.

12. On 5th October 2012 the Supreme Court refused an application for a stay on the order of O'Neill J. The appeal from Hedigan J.'s refusal to stay the order of O'Neill J. was not progressed at that time.

13. In her notice of appeal of 24th August 2015 from Noonan J.'s dismissal of the probate proceedings, Ms. Rippington also purported to appeal the order of O'Neill J. On 13th November, 2015 when dealing with directions regarding the appeal in the probate proceedings, Kelly J., then sitting in the Court of Appeal, struck out the appeal insofar as it purported to appeal the order of O'Neill J.

14. On 31st July, 2017 Ms. Rippington and her husband made an application to the Court of Appeal seeking an extension of time within which to appeal the order of O'Neill J. This was dismissed on 19th December, 2017 (*Rippington v. Cox* [2017] IECA 332, Ryan P., Peart and Whelan JJ.). On the same day the court dismissed her appeal in the probate proceedings.

15. On 14th March, 2018 the Supreme Court made an order refusing to cancel the original direction of the Chief Justice, made under Article 64.3.1 of the Constitution, transferring the appeal concerning the order of Hedigan J. from the Supreme Court to the Court of Appeal.

16. On 3rd June, 2018 Ms. Rippington issued a motion seeking to set aside the order of O'Neill J. This application was struck out by Binchy J. on 23rd July, 2018 who also made an order for costs against Ms. Rippington.

17. On 27th July, 2018 the Court of Appeal acceded to an application brought by Bishop Cox and Ms. Butler to strike out the then only subsisting appeal, dated 27th August, 2012, against the order of Hedigan J. on the grounds that it was moot and was bound to fail (*Rippington v. Cox* [2018] IECA 265 Peart, Irvine and Whelan JJ.).

Application to revoke the grant of administration.

18. Having discharged her obligations pursuant to the grant of administration, Ms. Stephenson applied for an order revoking that grant, which was acceded to by Baker J. The order of Baker J. was appealed and on 11th November, 2014 the Supreme Court dismissed the appeal. Also, in November, 2014, the High Court made an order directing Ms. Rippington to

indemnify the estate in respect of the costs of the motion of the 21st July, 2014. An appeal from this order was dismissed by the Supreme Court on the 26th February, 2019.

Further Proceedings- *Majella Rippington v. Michael Cox*, Record Number 2015/7970P

19. In October, 2015, proceedings were instituted by Ms Rippington against Bishop Cox in his personal capacity and in his capacity as executor of Celine Murphy's estate. It was expressly pleaded that Ms. Stephenson was appointed pursuant to an "*erroneous order*" of O'Neill J. On 27th January, 2016 Barrett J. struck out these proceedings as being frivolous and vexatious.

20. For the sake of completeness, in 2015 Ms. Rippington issued proceedings against her former solicitor. These are ongoing and are not the subject of this Court's consideration.

The defendants

21. Of the continuing defendants, the fifth, sixth and eleventh named defendants are solicitors and junior counsel who acted for Bishop Cox and Ms Butler in the probate proceedings and in certain applications to the court in respect of probate matters. Ms. Stephenson, the seventh defendant, is a solicitor who was appointed administrator *pendente lite* to the deceased's estate. The eighth defendant, Ms. McGurk, was a witness in the probate action and the person to whom the will was addressed. She is not a party to these applications. Although qualified counsel, she did not act for any of the parties in any litigation pertaining to the deceased's estate. The ninth defendant, Mr. Maguire B.L., at one time represented Ms. Rippington in the probate proceedings and also represented her on the application before O'Neill J.

Statement of Claim

22. In light of the foregoing chronology of events, I now turn to a consideration of the statement of claim. It extends to 43 pages and pleads a litany of complaints against all of the defendants.

23. The plaintiff pleads that fifth and sixth defendants 'hijacked' the estate of Celine Murphy. It is contended that these defendants owe a duty of care to those affected and a fiduciary duty to the estate of the deceased person, including a duty not to aid and abet fraud, wrongdoing and harm to innocent parties. While it is admitted that there was no duty owed in contract, as the defendants did not represent the plaintiff, it is pleaded that they were conflicted in acting for the estate in proceedings while defending the executor and the beneficiary.

24. Ms. Stephenson is alleged to have been a conflicted person, was not independently appointed, and that she intermeddled in the estate under an erroneous order (emphasis added).

25. The allegations against the ninth defendant, *inter alia*, focus on the application to O'Neill J. and it is pleaded that he deceived the plaintiff and her co-plaintiffs and gave an invalid consent to the probate judge.

26. The eleventh named defendant did not act for nor was she instructed by or on behalf of the plaintiff in these proceedings. She was instructed by the fifth and sixth named defendants on behalf of Bishop Cox and Ms Butler in the probate proceedings. Those defendants also acted in the applications to O'Neill J. and Baker J. It is alleged that she acted improperly on the application before O'Neill J. and, further, in July, 2014, she misrepresented to Baker J what are alleged to be the true facts as to the revocation of the grant of administration.

27. Included in the pleadings are allegations of a general nature concerning what is described as mishandling by law firms.

28. Analysis of the reliefs sought in the prayer in the statement of claim reveals that it is primarily focussed on the alleged invalidity of the order of O'Neill J. The reliefs sought are as follows:

> *" 1. An order that the order of Judge O'Neill dated 23 July 2012 be set aside on the grounds that: The order is a nullity, the papers were fabricated and there was no jurisdiction to award plenary costs in this application.*

2. An order that the order of Judge O'Neill dated 23 July 2012 be set aside on the grounds that the plaintiffs did not give their consent, permission or approval.

3. An order that the order of Judge O'Neill dated 23rd of July 2012, be set aside on the grounds that the administrative officer of the court Judge O'Neill did not have subject matter jurisdiction to hear any aspect of a plenary case without jurisdiction of Chancery.

4. An order for a telescopic review of all of the evidence and claims of the plaintiff who has been denied unlawfully.

5. In order for an inquiry into the handling of the estate of the late Celine Murphy by the executor of Michael Cox and his legal team.

6. An account and inquiry into the accounts of the estate of Celine Murphy and the financial harm to Catherine Murphy's estate.

7. An order for inquiry as this Honourable Court deems

8. An order for damages as per reliefs sought.

9. Interest pursuant to statute or alternatively pursuant to the equitable jurisdiction of this Honourable Court.

10. Such further and other relief as to this Honourable Court deems just and proper.

11. The costs of the within proceedings."

The Scope of this Appeal

29. Simons. J delivered two separate judgments. The first or principal judgment was delivered on 24th May, 2019, in which he struck out the proceedings against the applicant defendants on the basis that they disclosed no cause of action, that they were frivolous and

vexatious and an abuse of process. He also made orders restraining Ms. Rippington from instituting any further proceedings or taking any further steps in any pending proceedings against any of the defendants without the prior leave of the President of the High Court (*Rippington v. Ireland* [2019] IEHC 353, "*the principal judgment*"). These orders were perfected on 10th September 2019. A second judgment was delivered on 11th October, 2019 in which the trial judge addressed the issue of costs *("the costs judgment"*). He made an order that the defendants recover specified sums in respect of costs and outlay. The costs orders were also perfected on 11th October 2019.

30. On the face of it, the original notice of appeal filed on the 7th November, 2019 against the judgment and orders of Simons J. is an appeal against the costs' orders made and perfected on the 11th October, 2019. Paragraph 2 of the notice of appeal, however, under the heading '*Decision that it is sought to appeal*' refers to the principal judgment. On 20th December 2019, Ms. Rippington was given liberty to amend her notice of appeal. By amended notice of appeal filed on 24th January, 2020, Ms. Rippington includes, as part of the appeal, the orders made in consequence of the principal judgment.

31. Certain objections have been raised in respect of the appeal from the order perfected on 10th September, 2019 on the basis that the appeal is out of time and that no extension of time was sought or granted. All parties, however, have made submissions concerning the appeal in respect of orders made consequent on the principal judgment and in respect of the later order for costs. In the circumstances, the court has treated the appeal as being against all orders made by Simons J., whether perfected on 10th September, 2019 or 11th October, 2019.

Application to adjourn and defer the proceedings and appeal

32. The defendants' motions were case managed in the High Court and were scheduled to be heard in May 2019. As recorded in the judgment of the trial judge, the matter was listed on a peremptory basis. On 11th April, 2019 Ms. Rippington issued a motion seeking leave to

amend the statement of claim and for an order staying the defendants' motions pending delivery of an amended statement of claim. It seems that this motion was issued without the leave of, or reference to, the court. Ms. Rippington's application for an adjournment was refused. The trial judge held that it was not open to Ms. Rippington to seek to set aside the hearing date by bringing an eleventh hour application to amend. Further, he ruled that the purported application to amend was irregular as a copy of the proposed amendments had not been furnished to the defendants in advance of the application, particularly in the context of proceedings which were case managed and where neither the court nor the defendants had been made aware of the proposed amendments. That remains the position: no draft Amended Statement of Claim has been produced by Ms Rippington and no indication has been given by her at any stage of the nature and effect of any amendments that might be made to the existing Statement of Claim

33. Before this appeal commenced Ms Rippington sought an adjournment on a number of grounds. First, she contended that the appeal should be deferred pending the coming into effect of the Judicial Council Act 2019, s. 42 so that any grievance that she may have against the trial judge might be agitated as a complaint. She also wished that the matter be deferred so that the authorities to whom she made complaints might be afforded time to investigate those complaints which concern the conduct of persons involved in the administration of the deceased's estate. She also wished to obtain expert reports on liability. This appeal was due to be heard in April, 2020. The hearing was delayed due to interruptions brought about as a result of the Covid-19 pandemic. The court had previously refused an adjournment by the applicant made on somewhat similar grounds on the 21st January, 2021 and no new factors had emerged in the interim. An issue concerning the preparation of books of appeal, had been overcome with the assistance of the solicitors representing one of the defendants.

34. The Court, in refusing the application for an adjournment, was satisfied that the coming into effect of the Judicial Council Act 2019 s. 42, or any potential investigation of a criminal

nature by An Garda Siochana had no relevance to this appeal. Further, when viewed in its entirety the plaintiff had ample time within which to obtain any such expert report as she may have wished to obtain.

The court's jurisdiction to strike out proceedings as disclosing no cause of action or as being frivolous or vexatious

35. In *Lopes v. Minister for Justice, Equality and Law Reform* [2014] 2 I.R. 301, Clarke J. (as he then was) outlined the distinction between the jurisdiction which arises under O. 19, r. 28 of the Rules of the Superior Courts and the inherent jurisdiction of the court to strike out proceedings. He continued:-

> "*The inherent jurisdiction can be traced back to the decision of Costello J. in Barry v. Buckley [1981] I.R. 306. However, that jurisdiction needs to be carefully distinguished from the jurisdiction which arises under the RSC, precisely because it would be inappropriate to invoke the inherent jurisdiction of the Court in circumstances governed by the rules. In that context, I said, at para. 3.12. of my judgment in the High Court in Salthill Properties Limited & anor v. Royal Bank of Scotland plc & ors [2009] IEHC 207, the following:*
>
> > *'3.12 It is true that, in an application to dismiss proceedings as disclosing no cause of action under the provisions of Order 19, the court must, accept the facts as asserted in the plaintiff's claim, for if the facts so asserted are such that they would, if true, give rise to a cause of action then the proceedings do disclose a potentially valid claim. However, I would not go so far as to agree with counsel for Salthill and Mr. Cunningham, to the effect that the court cannot engage in some analysis of the facts in an application to dismiss on foot of the inherent jurisdiction of the court. A simple example will suffice. A plaintiff may assert that it entered into a contract with the defendant which contained certain*

express terms. On examining the document the terms may not be found, or may not be found in the form pleaded. On an application to dismiss as being bound to fail, there is nothing to prevent the defendant producing the contractual documents governing the relations between the parties and attempting to persuade the court that the plaintiff has no chance of establishing that the document concerned could have the meaning contended for because of the absence of the relevant clauses. The whole point of the difference between applications under the inherent jurisdiction of the court, on the one hand, and applications to dismiss on the factual basis of a failure to disclose a cause of action on the other hand is that the court can, in the former, look to some extent at the factual basis of the plaintiff's claim.'"

Clarke J. Observed at para. 17 of *Lopes* that:-

"*The distinction between the two types of application is, therefore, clear. An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J. pointed out at p. 308 of his judgment in Barry v. Buckley [1981] I.R. 306, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail*

on the merits, then the inherent jurisdiction of the court to prevent abuse can be invoked."

36. Having considered the relevant principles, Simons J. was satisfied that irrespective of the source of jurisdiction invoked, the proceedings should be dismissed.

37. It is clear that the jurisdiction of the court, whether arising under the Rules of the Superior Court or pursuant to its inherent jurisdiction, must be exercised sparingly. Nevertheless, the court should not shirk from striking out proceedings where it is clearly satisfied that they disclose no cause of action and cannot be saved by proposed amendments , or where the proceedings are frivolous and vexatious and an abuse of process.

High Court judgment

38. The principal reason advanced by the trial judge for acceding to the defendants' applications was that the proceedings are predicated on the suggested invalidity of O'Neill J.'s order which had been the subject of previous court rulings. Simons J. was satisfied that it was an abuse of process for the plaintiff to seek to reagitate issues concerning the validity of that order in circumstances where she neither sought to appeal it at the relevant time nor had she applied to O'Neill J. to vary the order. He concluded that it was not open to her to use the within proceedings to launch a collateral challenge to the finding of the Court of Appeal that the order of O'Neill J. was properly made. He described these proceedings as representing at least the fifth attempt to set aside that order. Further, neither Bishop Cox nor Ms. Mary Butler, who had been parties to the application before O'Neill J., were parties to these proceedings and therefore that order could not, as a matter of natural justice, be set aside in these proceedings. The trial judge was also not satisfied that Ms Rippington had been able to point to any actionable wrong on the part of any of the defendants.

39. In summarising, Simons J. stated:-

"*10. ... The uncontroverted evidence before the court indicates that the order appointing the administrator pendente lite was made on consent, and, in any event, that it was a proper order to be made in the context of the then ongoing litigation. Ms. Rippington had the benefit of legal advice at the time. Neither her own barrister nor the solicitors and barrister acting on behalf of the other side can be criticised for their conduct. Similarly, no valid criticism can be made of Ms Stephenson. The uncontroverted evidence indicates that Ms Stephenson discharged her duties properly and was awarded her costs out of the estate*".

40. Even if it had been established that any loss was caused to her late sister's estate, Simons J. was satisfied that Ms Rippington did not have the standing to make a claim in circumstances where she was not a beneficiary under the will nor would she have been a beneficiary on intestacy. Ms. Rippington was unable to point to any loss or damage suffered by her personally as a result of any alleged invalidity of the order.

Some relevant judicial observations in previous litigation

41. In light of the conclusion of the trial judge and considering the nature of the reliefs sought by the Ms. Rippington, it is of relevance to consider certain judicial observations made in decisions in previous litigation or on previous applications concerning Ms. Rippington's claims.

42. On 8th August 2012, Hedigan J. described O'Neill J.'s order as being very sensible and practical. It resulted in the appointment of an entirely independent solicitor for the purpose of gathering and preserving the assets of the deceased and for discharging the mortgage. The approved note of Hedigan J. records:-

"*It seems to me that this was a most sensible course of action in order to preserve the estate for whoever ultimately was to benefit from it. Neither party was prejudiced and*

neither party would benefit. Only the estate would be affected and this only to the extent that maintaining its integrity pending the resolution of the dispute between the parties".

43. In his judgment of 19th December, 2017 (*Rippington v. Cox* [2017] IECA 332), in refusing the application to extend time in which to appeal the order of O'Neill J., Peart J. observed:-

"*... .another obstacle in the way of the Court exercising its discretion by extending time is the fact that it would be utterly futile to do so as the administrator appointed under the order sought to be appealed has completed her work under the grant of administration that she extracted pursuant to the order. The appeal is in that sense entirely moot and no worthwhile purpose can be achieved.*

19. Quite apart from all of that, there is in my view no arguable ground of appeal advanced. The order was made on consent. The respondents to the motion were represented by solicitor and counsel. It is clear from counsel's report to his instructing solicitor that instructions were taken and agreement eventually obtained from them, including from Mrs. Rippington, to the proposed appointment of Ms. Stephenson.

20. The fact that Mrs Rippington now disputes that she gave a valid consent does not alter the fact that the Court was informed that agreement had been reached in relation to the appointment of Ms. Stephenson, and that the order could be made on that basis."

Whelan J. in her judgment in the same proceedings observed:-

"*All the evidence confirms that the application brought in the probate list in July 2012 by the named executor was wholly warranted at the time for the purposes of preserving the estate of the deceased and discharging a mortgage liability. The grounds of appeal being proposed appear in large measure to amount to a collateral attempt to reopen yet again aspects of the plenary action whereby the applicants sought to impugn the last will and testament of the deceased. The proposed notice of appeal fails to articulate*

any arguable ground of appeal. The propositions being advanced are substantially unstateable and include broad allegations of dishonesty, deception, misrepresentation and fraud asserted in a generalised way against unspecified individuals commingled with unpersuasive legal heresy."

44. Whelan J. also stated that had the appellants in July, 2012, wished, for any legitimate reason, to vary the order, they ought to have applied to O'Neill J. in the probate list to have it set aside. No explanation had been offered for such omission or for the failure to make the application at that time. She continued:-

"*Finally, it is clear from its terms and the submissions filed that this motion is in effect an attempt to reopen a decision already made by this Court on 13th November, 2015 when Kelly J., as he then was, ordered to be struck out such aspects of the appeal as concerned the orders made by O'Neill J. on 23rd July, 2012. That order was never appealed against.*"

45. On 27th July, 2018, (*Rippington v. Cox* [2018] IECA 265) this court concluded that there was no basis for a stay on the order of O'Neill J. and that there was no longer any substantive appeal pending in relation to the order of Hedigan J. Irvine J. (as she then was) observed that, in legal terms, an appeal which is bound to fail is one which must be categorised as an abuse of process. She stated at para. 13 of her judgment:-

"*What I hope is clear from this chronology is that the substantive proceedings brought by the appellants were dismissed by Noonan J. in the High Court, and that decision was upheld in this Court. Further, the order made by Mr. Justice O'Neill on the 23rd July 2012, which the appellants sought to make the subject matter of an appeal to this court, is unchallengeable for the reasons outlined by Ms Justice Whelan in her judgment of the 19th December 2017 wherein she explained why it was that the time could not be extended to permit the appellants appeal the order of O'Neill J.*"

Discussion

46. The orders sought in the statement of claim expand on the relief claimed in the indorsement of claim in the plenary summons. It is evident from the pleadings and from the affidavit sworn by Ms. Rippington on the 21st February, 2019 that while issues are raised concerning orders made by Baker J., the claim in these proceedings is fundamentally rooted in a challenge to the validity of the order of O'Neill J. Apart from the express relief sought in the statement of claim, at para. 27 Ms Rippington pleads that she has exhausted every remedy to have**,** what she describes as, the erroneous order of O'Neill J reviewed and has been refused by the courts.

47. Having considered the pleadings, the affidavits and the submissions of the parties, I am satisfied, therefore, that any suggested causes of action against the defendants are clearly predicated on a challenge to the validity of final court orders. Any lingering doubts which may exist regarding the nature of Ms. Rippington's claim are dispelled by the contents of her affidavit sworn on the 12th April, 2019 and her continuing submissions to this court, that the order of O'Neill J. is void. It is patently clear from that affidavit that she wishes to relitigate matters concerning the estate of her sister. All such issues have been fully articulated, argued, and determined, not only at first instance but on appeal and it is clear that, as pleaded, Ms. Rippington seeks, impermissibly, to reopen and to challenge final court orders collaterally. I am satisfied that the trial judge was entirely correct to conclude that these proceedings constitute an abuse of process and ought to be struck out on that account.

48. Given this conclusion it is perhaps unnecessary to express a view on the trial judge's ruling in relation to the dismissal of the proceedings under the Rules of the Superior Courts. I am also satisfied, however, that the trial judge was correct in concluding that whether the court approaches the defence applications on the basis of its inherent jurisdiction or under the RSC,

the proceedings ought to be dismissed. Ms. Rippington has not engaged in any meaningful way in either her written or oral submissions before this court with the trial judge's ruling on this aspect of the defendants' applications.

49. From analysis of the pleadings it is difficult to discern any cause of action known to the law in tort, contract, fiduciary duty or otherwise, or breach of such duties. The fifth, sixth and eleventh defendants acted for the opposing side in the probate proceedings. To the extent that reliance is placed on alleged misrepresentations by them, nothing is advanced to substantiate the allegations made or to suggest that they acted otherwise than in accordance with their obligations to their clients and in accordance with their instructions and their duties to the court. Nor am I satisfied that a proper basis for the foundation of a duty of care at law or the existence of or breach of fiduciary has been pleaded.

50. In light of previous court orders and judicial observations and findings, the claim against the seventh named defendant is simply unsustainable. The claim against her is that she acted under an erroneous order. The order of O'Neill J is a valid and final order, which cannot be questioned in these proceedings. Ms Stephenson was entitled to act as she did in fulfilment of her obligation under that order. The order made by Baker J discharging her as an administrator is also a valid order and any challenge thereto has been conclusively determined against Ms. Rippington.

51. It is perhaps appropriate to at this stage address the issue of whether Ms. Rippington would have benefited from a successful challenge to her late sister's will and if, not, the consequences of such conclusion.

52. That she is a beneficiary in her mother's estate leads her to contend that she is or would have been a beneficiary on the death of her sister intestate. This matter has been addressed in earlier court rulings and it appears to me that much of Ms Rippington's agitation is borne from a fundamental misunderstanding of the operation of the Succession Act 1965,s. 68. It is clear

that whatever benefit she might ultimately have enjoyed in her mother's had her sister's will been declared invalid, as a person who was not entitled to succeed on intestacy she did not, as a matter of law, stand to benefit in any successful challenge to her sister's will. In any event the debate is academic as the challenge to the will has failed.

Are the proceedings capable of being saved by amendment following the withdrawal of Statement of Claim as delivered

53. Where a party seeks to amend a pleading in order to save proceedings from being struck out as disclosing no cause of action, there is an obligation on that party, at minimum, to provide some broad outline of the proposed amendments for consideration by the court and, more importantly, by an opponent. This issue was considered by Haughton J in his judgment for the Court in *Fulham v Chadwicks* [2021] IECA 72. In the course of that judgment, he stated:-

> *"58. More recently, in Daragh v Daragh [2018] IEHC 427 McDonald J. in summarising the strike out jurisdiction refers to Chan v Osseous Ltd and Lopes v Minister Justice [2014] 2 IR 301, and referring to the possibility that a claim might be saved by amendment, stated (at paragraph 36):*
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> *"…I would add that, in my view, if this principle is to be applied in any particular case, an intimation would have to be given by the plaintiff or his legal representatives that the plaintiff proposes to amend the claim."*
>
> *59. This caselaw gives little guidance as to the principles that should apply to the exercise of the jurisdiction to permit an amendment to 'save the action' or whether they differ in any significant way from the principles to be applied in 'ordinary' cases where parties seek to amend the pleadings. It does however suggest that the claimant or his/her lawyers will usually be required to intimate an intention to amend, and at least the general nature of the amendment suggested, in response to the motion to dismiss.."*

Despite the further passage of time, Ms Rippington has failed to set out (or indeed give any indication whatever) what a new draft amended statement of claim might plead. Notwithstanding the irregularity and failure to outline proposed amendments in even the broadest of detail, on a consideration of all that has been urged by Ms. Rippington, I am satisfied that nothing has been advanced which could lead me to the view that these proceedings might be saved by any potential amendment. In adopting this broad approach to this aspect of Ms. Rippington's application, it is not intended to detract from the trial judge's statement of principle on the appropriate steps which ought to be taken when a party seeks to amend a pleading in the face of an application to have proceedings struck out as disclosing no cause of action.

54. In her affidavit grounding the notice of motion issued on 11th April 2019 and sworn by her on that date, Ms. Rippington averred that she was under the mistaken impression that she was compelled to deliver a statement of claim within a strict time frame and that she was not then ready to do so. She averred that she required expert reports on liability which were necessary when suing professionals, that she was actively seeking such reports and that when they were obtained she would be in a position to draft and deliver a focused and sustainable statement of claim. She sought time to deliver an amended statement of claim and requested that the defendants' motions be adjourned generally or stayed until she had the opportunity to do so. Importantly, at para. 8 of that affidavit she avers that she did not propose to rely on the statement of claim which she delivered on 3rd September, 2018 and claimed that she was "*bounced"* into delivering it.

55. In this context it is perhaps also of some significance that in her affidavit of 12th April, 2019, sworn in response to the applications under consideration and on the day following the swearing of the affidavit in support of her motion to amend/adjourn, Ms Rippington makes allegations of fraud against "*law firms*". While averring in her affidavit of the 11th April, 2019

that she did not wish to rely on the statement of claim, in her affidavit sworn on 12th April, 2019, she continues to make complaint of the circumstances surrounding the making of the will, the conduct of the probate proceedings and failed attempts to compromise those proceeding. She avers that there is a genuine claim that law firms orchestrated High Court litigation needlessly, that the family were easy prey and that there is a firm case of tort of deceit and neglect. The thrust of this affidavit is that the plaintiff claims to be the victim of what she believes to be a deliberate act of wrongdoing against her for the benefit of law firms who made gains from her late sister's estate. It is clear that the continuing focus of Ms. Rippington's complaints is on the circumstances of the making of the will, the conduct of the probate proceedings and what she described as failed attempts to compromise those proceedings**.**

56. Of further significance is that in her oral submissions to this Court, Ms Rippington submitted that the trial judge had failed to understand that the purpose of the case was to hold to account persons, including officers and those described as standing members of the court, who are alleged to have been responsible for the wasting of her sister's estate, whether through inordinate delay or otherwise; and to vindicate the appellant's good name. These submissions enforce my view that the central thrust of her claim concerns, and will, if permitted, continue to concern, the alleged invalidity of final and conclusive orders. Nothing has been advanced by Ms. Rippington to suggest that any claim she may have against the defendants in these proceedings is not predicated on the suggested invalidity of the orders of O'Neill, Baker or Noonan JJ., all of which were affirmed on appeal to this court or the Supreme Court.

57. Despite the passage of time no expert report has been produced and I am satisfied that nothing has been advanced to suggest that any potential amendment of her claim against the defendants will be any different to the thrust of that which is contained in her statement of claim delivered on 3rd September 2018.

Alleged bias of the trial Judge

58. No evidence has been placed before this court suggesting any alleged bias on the part of the trial judge and I cannot identify any justification for such allegation. To the extent that Ms. Rippington is critical of his judgments and the use of certain terminology therein, I am entirely satisfied that nothing in the reasoning of the trial judge, the structure of his judgment or any robust wording which may have been employed, evidences any such alleged bias. No sustainable ground of appeal arises in this regard.

Failure to adjourn the hearing of the motion

59. I am not satisfied that it has been established that the trial judge erred in principle in the exercise of his discretion. I am equally satisfied that no injustice has arisen as a result of the ruling of the trial judge in this regard. Even to this day and despite the passage of time Ms. Rippington has not advanced matters further but simply wishes the court to place these proceedings in abeyance pending the outcome of some non-specific, generalised and questionable roving inquiry or inquiries into the actions of persons who she may have come in contact with during the course of the probate proceedings or other applications. This is clearly unsatisfactory, is oppressive to the defendants and offends against the important principle of finality of litigation. I am satisfied that it was within the jurisdiction of the trial judge to refuse to entertain Ms Rippington's motion or to adjourn the hearing of the defendants' motions.

***Isaac Wunder* orders**

60. Applications were made for *Isaac Wunder* orders by the fifth, sixth and eleventh named defendants, but not by the seventh or ninth named defendants

61. The principles underpinning the making of an order restraining a party from instituting proceedings against another party, without leave of the President of the High Court, is to ensure that the process of the court is not abused. In making the orders in this case, Simons J. relied

on *dicta* of Keane C.J. in *Riordan v. An Taoiseach (No. 4)* [2001] 3 I.R. 365 at p. 370 as follows:-

> "*It is, however, the case that there is vested in this court, as there is in the High Court, an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious. The court is bound to uphold the rights of other citizens, including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices as well as by private citizens. This court would be failing in its duty, as would the High Court, if it allowed its processes to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation.*
>
> *The applicant has not merely repeatedly sought to reopen decisions of this court, he has also persistently abused the locus standi which he has been afforded by the High Court and this court in cases in which he has no direct personal interest, in order to make scandalous allegations, not merely against members of the judiciary, but other persons whom he chose to join as defendants in his proceedings.*"

62. Applying those principles, the trial judge was satisfied that it was appropriate to make such orders against Ms. Rippington. He concluded that she had engaged in a relentless campaign to re-agitate issues in respect of the administration of her late sister's estate and had refused to accept the fact that the order of the O'Neill J. could not be set aside in circumstances where no appeal was taken in time, that the Court of Appeal has since refused to grant an extension of time and that any appeal would, in any event, have failed in circumstances where there were no arguable grounds for setting aside that order. Simons J. was satisfied that the repeated attempts by Ms. Rippington to set aside the order of O'Neill J. represented an abuse of the court process. He observed:

"*The affected parties have been put to the trouble and expense of having to respond to each of her unmeritorious applications to court. To date, there have been at least five attempts on the part of Ms. Rippington to set aside the order.*

63. The trial judge was satisfied that Ms. Rippington could achieve no practical benefit from the litigation. He placed emphasis on Irvine J.'s observations in *Rippington v. Cox* [2018] IECA 265, that there is an obligation on the court to marshal its own scarce resources. He concluded that not only was this litigation abusive but the manner in which the litigation had been conducted was a cause for concern particularly in the light of the nature, extent and indiscriminate nature of allegations made. He made orders in favour of the defendants, including the ninth and eleventh defendants who had not specifically sought such orders.

64. It is clear that the plaintiff has sought to reopen and revisit orders made by the High Court and upheld on appeal, particularly the order of O'Neill J. In oral submissions to this court, the plaintiff continues to refer to this order as being "*void*". The multiplicity of allegations made against these defendants, the principles of finality of litigation, the neglect or failure to discharge costs orders, the avoidance of any further unnecessary and pointless expense, consumption of time and stress to the defendant, potential and real, the need to guard against the wasting of scare court resources dictate that any further proceedings as Ms Rippington might contemplate bringing against these defendants may only be brought with court permission. I am satisfied that this is an appropriate case in which to make orders in favour of the fifth, sixth and eleventh defendants to restrain Ms Rippington from instituting any further proceedings against them or from taking any further steps in any pending proceedings without the prior leave of the President of the High Court.

65. I have some concern, however, in relation to the propriety of the making of orders in favour of the seventh and ninth named defendants in circumstances where they did not seek such relief and, on this appeal, have not sought to maintain that such orders should be continued

in their favour. In *Houston v. Doyle* [2020] IECA 289, Collins J. stressed that any such order must be made only insofar as is necessary and that, before being made, the party who is sought to be made subject to it, must, in ordinary circumstances, be placed on advanced notice and given an opportunity to respond. While acknowledging that, absent such application, there may nevertheless be situations where the court considers it necessary to make such an order, it was also recognised that a court should be very cautious about so doing, lest it leaves itself open to any suggestion that it had "*entered into the ring*".

66. Here, of course, Ms Rippington knew that she was at risk of *Isaac Wunder* orders being made against her as such orders were expressly sought by the fifth, sixth and eleventh defendants. Having decided to make the orders sought by those defendants, it is perhaps understandable that the trial judge considered it appropriate to extend those orders to the other defendants. However, the fact remains that those defendants, who were represented by solicitor and counsel, had not considered it appropriate to seek such orders against Ms Rippington precisely because, on their assessment, their position was different to the position of the other defendants (who had been sued by Ms Rippington previously). Accordingly, Ms Rippington was not on notice of the risk of such orders being made in relation to those defendants and did not have an opportunity to be heard as to whether such orders ought to be made or not. In the circumstances, I do not consider it appropriate that the orders made in favour of the seventh and ninth named defendants should continue.

Appeal against the order for Costs

67. Having considered bills of costs submitted by or on behalf of the defendants, Simons J. measured costs in favour of the defendants in the gross sum of €6,750 and a further sum of €500, exclusive of VAT, in respect of the outlays incurred by each of the firms of solicitors involved. He adjourned the application in respect of costs to permit the parties to adduce evidence if they saw fit. Ms Rippington did not avail of the opportunity, but the defendants did.

The Trial Judge considered this evidence and awarded each defendant a proportion of the total estimate of the costs incurred by them in the application for the reasons set out in his judgment.

68. Ms Rippington in her notice of appeal from the costs' orders, states that the Judge failed to depart from the costs against the plaintiff where genuine special circumstance exists. By this, I understand that she contends that the judge erred in principle by awarding costs in accordance with the general principle that costs follow the event on the basis of special circumstances allegedly present in her case.

69. I am not satisfied that it has been established that the trial judge erred in principle in his ruling in respect of costs. It was within his discretion to award costs in favour of the defendants. In truth, no significant argument has been advanced by Ms Rippington in support of her appeal on this issue. The costs which were measured, reasonable and proportionate. The appeal against the orders for costs must also be refused.

Conclusion

70. The many, varied and unrestrained allegations made against the defendants in the proceedings have at their heart (i) the continuing maintenance by Ms. Rippington that the order of O'Neill J. is invalid and/or (ii) a continuing challenge to the validity of her late sister's will.

71. These proceedings are a continuation of Ms. Rippington's attempts to collaterally challenge valid and final orders upholding the validity of the will or concerning the administration of the estate. There is no basis for an allegation that the order of the 23rd July, 2012 was procured by fraud. It was an order that was obtained on the consent of the parties. It is appropriate to record that the parties to that order, Bishop Cox and Ms. Butler, are not parties to these proceedings and, in any event, on the 19th December, 2017, this court ruled there was no justification for an extension of time to appeal that order and that there were no arguable grounds of appeal.

72. Ms Rippington's appeal must be dismissed. Her appeal against the orders of the trial judge restraining her from instituting proceedings against fifth, sixth and eleventh defendants without the prior leave of the President of the High Court is dismissed. The restraining orders made in favour of the seventh and ninth defendants are removed.

73. My provisional view is that the defendants have been entirely successful in the appeal and accordingly the costs of the appeal should follow the event. If any party wishes to contend for a different order as to costs that party should contact the office of the Court of Appeal within 14 days of the delivery of this judgment seeking a short oral hearing on the costs. Any party who brings such an application should bear in mind that if the proposed order is not altered that they may be ordered to pay the costs of the additional hearing.

74. Costello and Collins JJ. have read this judgment and authorised me to state that they are in agreement with it.

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