

Neutral Citation No: [2021] NICH 6

Ref: McF11493

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

ICOS No: 12/142597

Delivered: 30/04/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

DOROTHY MOFFAT

Plaintiff

v

LAURENCE MOFFAT

(As personal representative of the estates of Johnston Moffat and Florence Moffat)

Defendant

**The Plaintiff appeared as a litigant in person
Mr McEwen BL (instructed by the Holmes & Moffett Solicitors) appeared
for the Defendant**

McFARLAND J

[1] The Plaintiff issued a summons on the 23 February 2021 seeking an order for discovery, both on a general basis and on a specific basis in relation to documents lodged by the solicitors for the plaintiff in Companies House. The summons was addressed to the defendant and to his solicitors.

[2] The matter came on for hearing on the 26 April 2021.

[3] The original proceedings were commenced by the plaintiff on the 28 December 2012, and by a summons the plaintiff sought certain relief in respect of the property and personal chattels of her late parents, Johnston Moffat and Florence Moffat.

[4] The litigation has had a long journey, but ultimately by late 2016 and into early 2017, the case was finally dealt with by Mr Justice Horner. By an order of 6 April 2017, Mr Justice Horner entered judgment for the defendant and ordered the

plaintiff to pay the costs of the proceedings, to be taxed in default of agreement. The plaintiff had not attended on the date fixed for the final hearing.

[5] The plaintiff did not appeal that decision. It is now approximately 4 years later that the plaintiff has issued her summons.

[6] At the hearing before me the plaintiff explained that she had been unable to attend at the hearing as she was not residing at her home and was living in a refuge. She claimed that she had been under the coercive control of her brother, the defendant, and she complained about the conduct of her brother's solicitors, who had amongst other things, she said, prevented her from instructing solicitors.

[7] The plaintiff gave no real reason why she had not appealed the decision of Mr Justice Horner, although she did state that she had written to the Office of the Attorney-General but it is unclear exactly what response she had received.

[8] She raised before me the provisions of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, and in particular sections 1 and 2. These sections create a new domestic abuse criminal offence and define what is abusive behaviour. Although this legislation has received the Royal Assent, a significant portion, including sections 1 and 2, has not yet been commenced and is therefore not yet in force. In any event, sections 1 and 2 have no relevance to the civil action that the plaintiff brought against her brother or the summons before me. They relate to the creation of a new criminal offence.

[9] Subsequent to the hearing, the plaintiff communicated with the Chancery Office by two emails and asked that they be brought to my attention. (A third email sought to clarify certain dates.) The first is of 26 April 2021 at 16.39. It contains a criticism of the listing of this case in the court list before another matter involving a charity. The plaintiff asserted that this was no coincidence as on a previous occasion Mr McEwen had been rebuked by Huddleston J and on that occasion the plaintiff's case had been listed before a charity matter. This is of no relevance as the listing of chancery court business will very often have cases involving both inheritance and charities. Mr McEwen has not involved in the charity case listed after the plaintiff's case and that case has nothing to do with the plaintiff or her brother.

[10] By her second email at 18.12 on the same day, the plaintiff attempted to assert a link. The link was somewhat tenuous. The charity involved in the case listed after the plaintiff's case was mentioned in a debate in the Assembly in 2009 by a representative of the Social Democratic and Labour Party. The plaintiff asserts that this party is harassing her and that Mr McEwen contrived to facilitate the listing of the case involving the charity. The plaintiff asserts that an unnamed MLA has confirmed to her that the political party is behind her being harassed. The plaintiff is concerned that this had happened before, as she thinks Mr McEwen had arranged for this to happen on 21 October 2020. Insofar as any of these assertions are based in reality, they have no relevance to the matter raised by the plaintiff before me, namely

her application for a court order compelling her brother as defendant, and her brother's solicitors to provide discovery.

[11] Further emails were received from the plaintiff on the 28 April 2021, however they would appear to relate to another set of proceedings (ICOS 14/036054) currently being dealt with by McBride J. The content of the emails does not appear to have any bearing in relation to this application.

[12] Coulson LJ recently reaffirmed the very important principle of finality in relation to legal proceedings. In *AIC Limited v The Federal Airports Authority of Nigeria* [2020] EWCA Civ 1585 at [50] he stated:

"The principle of finality is of fundamental public importance ... Parties who receive a judgment in open court are entitled to act on that judgment, because an order takes effect from the moment it is made by the court ... The successful party should not have to worry that something will subsequently come along to deprive him or her of the fruits of victory. The unsuccessful party cannot treat the judgment that has been handed down as some kind of rehearsal, and hurry away to come up with some new evidence or a better legal argument."

[13] Discovery is a very important aspect of litigation, but it only applies to the parties to proceedings during the currency of those proceedings. Once the litigation has been concluded the need to provide discovery no longer applies as the case has been concluded. In the circumstances the plaintiff's application for discovery is refused and the summons is dismissed. I will hear the parties in respect of costs.