THE HIGH COURT

[2026] IEHC 398

[Record No. 2022/197 P]

BETWEEN

EILEEN MARTIN, HARRIET HYRRELL AND PATRICIA CONDRON

PLAINTIFFS

AND

JAMES JOHN HORAN AND ANTOINETTE (ORSE TONI) HORAN

DEFENDANTS

JUDGMENT of Ms. Justice Siobhán Stack delivered 18 June 2026.

Introduction

1. James Horan, late of 33 Bettyglen, Raheny, Dublin 5 (*"the Deceased"*), died on 23 October, 2016, a widower, leaving 11 children him surviving, one son and 10 daughters.

2. By his last Will and Testament dated 12 February, 2008 - the validity of which is not in dispute - the Deceased appointed the defendant, along with another of his daughters, Carol, as executors and trustees of his will, and also appointed them trustees for various purposes including the Trustee Act, 1893. A Grant of Probate issued to the defendants on 2 February, 2021, Carol having renounced her rights.

3. The second and third plaintiffs have served a notice of discontinuance, and only the first plaintiff, Eileen, now maintains this litigation.

4. At Clause 4 of his Will, the Deceased made the following bequest:-

"Upon the condition that my son James John sells his own home and puts the net proceeds of the sale into my Estate I GIVE DEVISE AND BEQUEATH my house at 33 Bettyglen Raheny Dublin 5 to my son James John for his own use and benefit absolutely."

5. Clause 7 of the Will provides:-

"In the event that my son James John refuses the bequest at paragraph 4 above, I DIRECT that my Estate be divided equally between my son John James and my nine daughters namely, Harriet, Carol, Tony, Eileen, Valerie, Sheila, Geraldine, Patsy and Norma in equal shares as tenants in common. I am excluding my daughter Maura from this bequest because she has already benefited substantially from me during my lifetime."

6. Clause 8 provided that, in the event that the first defendant accepted the bequest at para. 4 of the will, the residue would be left between nine of the Deceased's daughters, but again excluding his daughter Maura for the reasons already stated.

7. Notwithstanding the terms of the Will, the Deceased did not in fact have power, on the date he executed the Will, to dispose of his home as he had already executed a voluntary Deed of Conveyance on 30 November, 2001 (*"the 2001 Deed"*), by virtue of which he transferred his dwellinghouse to himself and the first defendant as joint tenants. As a result of that Deed, the Deceased's dwellinghouse passed to the first defendant by survivorship and did not go into the Deceased's estate.

8. These proceedings issued by way of plenary summons on 20 January, 2022. The endorsement of claim confirms that the first plaintiff sues in her capacity as a beneficiary named in the Deceased's Will and that the defendants are sued, *inter alia*, in their capacity as executors. The plaintiffs seek orders setting aside the 2001 Deed on the grounds of presumed undue influence, actual undue influence, and/or improvidence, together with declarations that

the house forms part of the estate of the Deceased, does not pass to the first defendant by way of survivorship, and is held by the defendants on trust for the estate of the Deceased and the beneficiaries thereof.

9. In addition, the first plaintiff claims orders removing the defendants, or either of them, as executors of the estate of the Deceased, and an order pursuant to s. 27(4) of the Succession Act, 1965, granting Letters of Administration to the plaintiffs or such other person as the Court might think appropriate. There is also a claim for an order pursuant to Order 56A (as amended) of the Rules of the Superior Courts and/or the Mediation Act, 2017, inviting the parties hereto to use mediation, conciliation, or other dispute resolution processes to settle or determine the proceedings and issues, and for an adjournment of the proceedings to allow same to occur.

10. I pause here to note that Order 125, r. 1, of the Rules of the Superior Courts provides that a *"probate action"* means *"any proceeding commenced by originating summons and seeking the grant or recall of Probate or Letters of Administration, or similar relief."* As a result, while these proceedings do not challenge the validity of the will of the Deceased, they are undoubtedly a *"probate action"* within the meaning of the Rules of the Superior Courts.

11. Order 12, r. 27 of the Rules of the Superior Courts, provides:-

> *"In probate actions the Plaintiff and defendant, within eight days of the entry of appearance on the part of the defendant, are respectively to file their affidavits as to scripts in the Central Office, whether they have or have not any script in their possession."*

12. Order 12, r. 28, makes it clear that an affidavit of scripts includes written instructions for a will.

13. The defendants entered an appearance in March, 2022, but have never filed an affidavit of scripts and, indeed, have refused to do so. Order 20, r. 5 of the Rules provides:-

"Where the defendant in a Probate action has appeared, the Plaintiff shall not be bound to deliver a statement of claim until the expiration of eight days after the defendant has filed his affidavit as to scripts."

14. As discussed further below, categorisation of this action by the Rules as a *"probate action"* has potentially significant consequences for the arguments made by the defendants in support of the application to dismiss the proceedings which they have now brought.

15. This motion was issued on 10 June, 2025, seeking to dismiss the proceedings on three grounds:-

(i) Pursuant to Order. 19, r. 28 of the Rules on the basis that the Plaintiffs' claim discloses no reasonable cause of action;

(ii) Pursuant to Order. 27, r. 1 of the Rules, dismissing the Plaintiffs' claim for want of prosecution for failure to deliver a Statement of Claim; and

(iii) Pursuant to Order. 122, r. 11 of the Rules of the Superior Courts to dismiss the Plaintiffs' claim for want of prosecution due to delay.

16. The relief at (ii) has been abandoned as a statement of claim was delivered on 12 March, 2026, presumably in anticipation of the hearing of the motion. As a result, the defendants now proceed to apply to dismiss on the basis that first, the plaintiffs' claim discloses no reasonable cause of action and, secondly, on the basis of delay. On the issue of whether the claim discloses a reasonable cause of action, the defendants say, first, that the plaintiffs have no *locus standi* and, secondly, that the claim is manifestly statute barred. These two issues, along with the question of whether the claim should be dismissed for delay having regard to the principles established by the Supreme Court in *Kirwan v Connors* [2025] IESC 21, now fall for determination.

Whether the first Plaintiff has locus standi

17. In essence, the defendants say that the first plaintiff has no *locus standi* to maintain these proceedings, as any action to set aside the 2001 Deed must be brought by the personal representatives of the Deceased, and, as the first plaintiff is not a personal representative of the Deceased, such an action could only be brought by the defendants.

18. The requirement to have an *"interest"* or standing was discussed recently by the Court of Appeal in *Lynch v Murphy* [2026] IECA 2. It is notable that the concept of standing in this is context is quite broad, and that the creditor of a beneficiary has sufficient *"interest"* to apply to revoke a grant of representation.

19. *Lynch v Murphy* itself was a much more straightforward case than this. The applicant in that case, who was seeking a Grant pursuant to s. 27(4) of the Succession Act, 1965, was alleged by the executor to be indebted to the estate and had in fact been sued by the executor in the Circuit Court. The applicants had no *"interest"* in the estate either as beneficiaries under the will or pursuant to intestacy nor were they creditors of the estate. Accordingly, regardless of the outcome, the plaintiffs in *Lynch v. Murphy* could not have obtained any benefit from the proceedings.

20. In this case, the first plaintiff claims as an alternative relief in the plenary summons, the revocation of the Grant of Probate to the defendants and a Grant to her pursuant to s. 27(4) of the 1965 Act. The basis for that application is that the first defendant is conflicted in that, as one of the executors, he ought to consider applying to set aside the 2001 Deed. However, as he is of course the principal beneficiary of that Deed, he is conflicted in discharging his role as executor.

21. The case against the second defendant is not quite as stark, but it remains the position that the second defendant has not sought to question or challenge the 2001 Deed either. Indeed, it has not been retrieved from storage and the only copy supplied to the Court is partly illegible.

22. In those circumstances, it is said that the first plaintiff is disadvantaged by the failure of the defendants, as executors, to consider challenging the 2001 Deed. In order to obtain the benefit which is due to her on the face of the Will, the validity of the 2001 Deed would have to be successfully challenged as, unless the 2001 Deed is set aside, the Deceased's dwellinghouse does not fall into the estate at all.

23. The first plaintiff therefore manifestly has an interest in instituting proceedings to set aside the 2001 Deed as, if these are instituted and successful, she will stand to receive a much greater benefit under the Will. As Whelan J. stated in *Lynch v Murphy* (at para. 43), the law in this jurisdiction is that *"interest"* for the purpose of establishing standing to bring the appropriate action is to be *"generously interpreted but is an absolute procedural prerequisite"*.

24. As the plaintiff seeks to become legal personal representative herself by way of a grant from this Court pursuant to s. 27(4) of the 1965 Act, for the purpose of applying to set aside the 2001 Deed, she therefore has the requisite interest to bring these proceedings and the claim cannot be struck out on this basis.

25. While there are other reliefs claimed which cannot be sought unless and until the 2001 Deed is set aside, the fact remains that the plaintiff has sufficient standing to seek at least some of the relief claimed and that the proceedings should not, therefore, be dismissed.

That the claim is statute barred

26. The defendants submit that the first plaintiff's claim is manifestly statute barred by reason of s. 13 of the Statute of Limitations, 1957, which applies to actions for possession of land.

27. It is true that, in *Gleeson v Feehan (No. 2)* [1997] 1 I.L.R.M. 522, the Supreme Court held that an action by the estate against a stranger who is in possession of land is governed by s. 13 of the 1957 Act, and not section 45. However, I am not at all clear that that cause of action has yet accrued. The first defendant is in possession of the property on foot of the 2001 Deed, and that Deed has not been set aside.

28. Of course, the 2001 Deed may never be set aside, as the claim of actual or presumed undue influence (like the assertion that the conveyance into joint names was an improvident bargain) has not been proven and may never be proven. This will be particularly the case if it can be shown that the Deceased had independent legal advice and that that advice was adequate in accordance with the principles in *Gregg v Kidd* [1956] I.R. 183 and *Carroll v. Carroll* [1999] 4 I.R. 241. However, so far, nothing has been revealed, either on affidavit or in the correspondence before the Court, to explain the circumstances in which the 2001 Deed was executed. If it was executed without the required independent legal advice, then it may be vulnerable to challenge.

29. The material point for the purposes of this application is that it is only on the determination of proceedings to set aside the 2001 Deed that the estate could seek possession of the Property from the first defendant. No submissions were made to the effect that such an application, i.e., to set aside the Deed, would now be statute barred.

30. Furthermore, while it is not entirely clear at present, it does not appear to have been appreciated until after the death of the Deceased that the 2001 Deed had been executed. The Will itself proceeds on the basis that the house was in the sole ownership of the Deceased and was not held jointly with the first defendant and it is not clear when the first plaintiff became aware of the existence of the 2001 Deed. That being the case - and without making any adverse finding against the first defendant, or indeed any other person - it is entirely possible that the limitation period would in any event be extended by reason of s. 71 of the 1957 Act.

31. If that is so, then it must be noted that these proceedings were instituted just over five years after the death of the Deceased, and only a number of months after the distribution of the cash assets which it is accepted fall into the estate. (Each beneficiary received €11,421.67 as her share in the estate.) The facts of this case are very far from establishing that the first plaintiff's action is statute barred, even if s. 13 of the 1957 Act was indeed the relevant limitation period.

32. I am very doubtful that s. 13 *is* the correct limitation period. In general, there is no limitation period for a claim for equitable relief: see Canny *Limitation of Actions* (3rd ed., Round Hall, Dublin, 2022) at para. 15.01, where it is stated that there is no limitation period in such an action for equitable relief, unless it has been recognised that the equivalent common law limitation period applies. The defendants' submissions are very far from establishing with any clarity what the limitation period is, when it accrued, or that it has expired. In those circumstances, I will not strike out proceedings on that basis.

33. I should add that there was also some emphasis on the fact that the assets in the Deceased's estate had been distributed, the assumption being, apparently, that all issues relating to the Deceased's estate had been finalised so that no question as to whether the dwellinghouse might ultimately be found to form part of the assets for distribution could now be raised.

34. That suggestion is entirely misconceived. Personal representatives of a deceased person remain such even after distribution of all of the assets gathered in. As stated in Williams, Mortimer and Sunnocks, *Executors, Administrators and Probate*, (22nd ed., Sweet and Maxwell, London, 2023) at para. 61-06:

> *"[U]nless the grant was limited, a personal representative who has taken a grant holds office for the rest of their life, or until they are removed. They therefore continue to be the proper representative of the estate as circumstances may subsequently require."*

35. One of the authorities cited in support of that proposition is *Attenborough v. Solomon* [1913] A.C. 76, where Viscount Haldane L.C. stated (at p. 83):

> *"The office of executor remains, with its powers attached, but the property which he had originally in the chattels that devolved upon him, and over which these powers extended, does not necessarily remain."*

36. A personal representative therefore remains appointed as such, even after he or she has assented to the devolution of the assets of the estate in those entitled. A straightforward example of how this works in practice is where it is discovered many years after the administration of the estate has concluded that a Deed of Assent of lands requires to be rectified. In that instance, if the legal personal representative who originally executed the Deed is still alive, he or she will be asked to execute a Deed of Rectification, frequently to perfect the title of a subsequent purchaser of the lands.

37. It is, therefore, no answer to the first plaintiff's claim to say that the assets which have to date been identified and gathered in by the executors have been distributed in accordance with the Will. If further assets are determined to form part of the estate in due course – and I stress that I am making no finding that the 2001 Deed is invalid or that the dwellinghouse forms part of the estate – then the legal personal representatives will be obliged to distribute those assets in accordance with the Will.

Want of prosecution

38. The reliance on *Kirwan v Connors* in this case is, in my view, misplaced. I have already set out the relevant Rules of Court dealing with *"probate actions"* and which are therefore applicable to these proceedings. That makes it clear that no Statement of Claim need be delivered until after an affidavit of scripts has been delivered. No such affidavit has been

delivered in this case and indeed delivery of such has been strongly resisted at all times by the defendants.

39. In those circumstances, I am of the view that the delay has occurred by reason of the active delay on the part of the defendants in failing to take a step which they are required to do under the Rules.

40. At para. 51 of *Kirwan*, Murray J. cited with approval the decision of this Court (Butler J.) in *Campbell v. Geraghty* [2022] IEHC 241, which makes it clear that, while the defendants do not have to prod a plaintiff into action, it is still material to consider whether they themselves have taken the steps required of them under the Rules.

41. There is perhaps an argument for saying that the first plaintiff should have taken action before now to compel the defendants to provide the affidavit of scripts. However, given that, at best, these proceedings fall within (ii) of the criteria set out by O'Donnell C.J. at para. 26 of his judgment in *Kirwan v Connors*, it seems to me that I could not in justice dismiss these proceedings. The Deceased, when making his Will, seems to have proceeded on the entirely erroneous belief that he was the sole owner of his dwellinghouse and could dispose of it in his Will. His testamentary capacity is not questioned, as I understand it, and therefore the Deceased's understanding as to the ownership of his home at the time he gave instructions for and executed his Will call for explanation.

42. In the circumstances, I will instead make case management directions to provide for the timely progress of these proceedings into the future.

43. Having done so, however, I will give the defendants the opportunity to take up the invitation of the first plaintiff as set out in correspondence in March, 2025, and which is also set out on the face of her plenary summons, and afford time for mediation if the parties wish to engage in that process. If mediation is to take place, the directions can be stayed to allow that to occur.