

THE HIGH COURT

PROBATE

[2026] IEHC 645

[Record No. 2017/2982P]

IN THE MATTER OF THE ESTATE OF CHRISTOPHER KEARNS LATE OF

338 KILDARE ROAD, CRUMLIN, DUBLIN 12

BETWEEN:

ARTHUR KEARNS

PLAINTIFF

AND

MARION DALY AND THOMAS DALY

DEFENDANTS

Judgment of Ms Justice Siobhán Stack delivered on the 25th September 2026.

1. These proceedings came before me in July, 2026, for the purposes of an application for:

- (i) an Order substituting the legal personal representative of the plaintiff, who has died since the action commenced, for the plaintiff in the action; together with

- (ii) an Order pursuant to s. 27(4) of the Succession Act 1965, to permit the defendants to administer the estate of the Deceased in accordance with the terms of settlement reached between the parties.

2. I acceded to the first application but refused the second. This judgment is principally for the purpose of recording my reasons for that refusal.

3. Christopher Kearns of 338 Kildare Road, Crumlin, Dublin 12 (*“the Deceased”*) died on 7th November, 2015, a bachelor, having never entered into a civil partnership, and without issue. His parents had pre-deceased him. He left a Will dated 29th September, 2006, in which he named the defendants herein as executors. In the dispositive provisions of that Will, he left his entire estate in two equal shares between the first defendant and his niece, Celia Flood, the daughter of one of his pre-deceased brothers. According to the affidavits sworn on behalf of the defendants, which are to some extent corroborated by the attendance of the solicitor who took instructions for the drawing of the Will, the Deceased chose to benefit the first defendant and Ms. Flood because they had cared for him in his later years.

4. The plaintiff challenged the Will on the basis that the Deceased suffered from a certain medical condition which gave rise to psychotic symptoms including hallucinations and paranoia. More particularly, he says that he was not named in the Deceased’s Will because the Deceased was suffering from irrational delusions about him, caused by his illness. The claim was, that as a result of his condition, the Deceased could not rationally choose among those who would have been likely to benefit. As this is an aspect of the threefold test for testamentary capacity derived from *Banks v. Goodfellow*, it was argued that the will was invalid for lack of such capacity.

5. These proceedings were issued on 31st March, 2017, and the original plaintiff died almost exactly three years later, on 25 March, 2020. I therefore acceded to the first

application and made an order substituting Arthur Kearns, junior, the son and legal personal representative of the original plaintiff, as plaintiff in place of his father. The parties have reached an agreement for settlement in which it was agreed that the original plaintiff's estate will receive a one third share in the Deceased's estate, with the first defendant and Ms. Celia Flood each receiving a one third share. (I assume – although this is not evident from the papers – that Ms. Flood has agreed to the settlement also, although she has not signed the Terms of Settlement, a copy of which is exhibited, nor is she a party to the proceedings.)

6. There is a dispute in these proceedings as to whether the Deceased had developed a dislike of the plaintiff solely by reason of delusions and paranoia suffered by him by reason of his schizophrenia or whether the two brothers had fallen out for other reasons. There is, it has to be said, an impressive affidavit from the solicitor who took the Will, which tends to show capacity. In particular, the solicitor's affidavit contains detail as to the taking of the Will, and not just *pro forma* averments or bare assertions which merely recite the legal test and which would not provide a court with sufficient information from which it could assess capacity.

7. However, with this particular type of medical condition, it would not always be apparent to a solicitor taking a will – no matter how much care was taken – that the testator might have been influenced in his decision-making as to who was to benefit in his will by that medical condition, of which the solicitor might be completely unaware. Therefore, even though the test is said to be a legal test rather than a medical one, the medical evidence is nevertheless relevant.

8. The application pursuant to s. 27(4) is made in reliance on the decision of Baker J. in *Re Hannon* [2018] IEHC 482, [2018] 3 I.R. 402. In that case, Baker J. noted the broad discretion enjoyed by the court pursuant to s. 27(4) and, in effect, balanced the

public interest in giving effect to the wishes of a deceased as expressed in a will or by the law as represented by the provisions governing distribution on intestacy, on the one hand, and on the other, the public interest in “*quietening litigation around the succession to the estate of a deceased person and in the consensual resolution of inter-family disputes*”. (See para. 48.)

9. The problem with this application is that not all those who are affected by the proceedings have in fact been joined to those proceedings, nor are they parties to the settlement, nor indeed are they on notice of this application. As a result, the issue of a grant pursuant to s. 27(4) would not finally “*quieten*” any issues relating to the validity of the Deceased’s Will.

10. The Deceased was one of a family of eleven, and nine of his ten siblings pre-deceased him. However, five of those pre-deceased siblings had, between them, 24 children, three of whom are apparently deceased themselves. Although I have not been told if the three nieces and nephews who are now deceased in fact survived the Deceased, he was in any event survived by at least 21 nieces and nephews who were entitled on intestacy, including Ms. Flood. None of these nieces and nephews are on notice of these proceedings or of this application, and the application for the Grant was made on the basis that it would be a matter for the parties to the settlement to deal with any future claim that might be made by any of the persons entitled on intestacy.

11. In my view, it would not be a proper exercise of the Court's discretion pursuant to s. 27(4) to permit the defendants to this action to extract a Grant in order to give effect to the Terms of Settlement. It was specifically noted by Baker J. in *Re Hannon*, which concerned a challenge to the validity of a second will made by the beneficiaries named in an earlier will, that the persons entitled under both the will under challenge

and those entitled under the earlier will (the validity of which was not challenged) “[were] parties to the Compromise”. (See para. 29.)

12. Although it was probably not strictly necessary in that case, as the validity of the earlier will was accepted, it was also specifically noted that “*all persons who would be entitled on intestacy are on notice of [the] application and make no objection to the order.*” (See para. 29.)

13. The result was that, in *Re Hannon*, the Court could be satisfied that all persons who might ever stand to benefit from administration of the estate - regardless of whether that administration ought legally to have taken place in accordance with one of the two wills or pursuant to an intestacy - were consenting to the order being made and that the effect of the settlement would be to finally determine the basis on which the estate should be distributed. That is not the case here.

14. As stated by Baker J. (at paras. 26 *et seq.*) the issue of the grant must be either “*necessary*” or “*expedient*”, and “*special circumstances*” involved must be “*more than a mere convenience, such as where beneficiaries disagree as to the person who should extract a grant in an estate, or indeed as to the distribution of an estate, whether interstate or testate*”.

15. In this case, the Grant is being sought to give effect to a settlement which has been reached between the beneficiaries under the Will and the original plaintiff, who was only one of the persons entitled on intestacy. Although the precise share enjoyed by the plaintiff is not particularly important - the material fact being that he was not entitled on intestacy to the entire of the Deceased’s estate – it is nevertheless striking to note that the original plaintiff would have been entitled on intestacy to only a one-sixth share in his brother’s estate.

16. In my view, this application is made for a “*convenience*” in the sense that it would allow the defendants to apply for a Grant so as to permit distribution on a particular basis, notwithstanding an unresolved question as to capacity which might result in five-sixths of the estate passing to the nieces and nephews entitled pursuant to s. 69 of the 1965 Act. In my view, the jurisdiction identified in *Re Hannon* only extends to cases where all those who might stand to benefit from the outcome of proceedings which are being compromised are agreeable to the making of the order pursuant to section 27(4).

17. In passing, I note from the papers that when an application was made to this Court (Baker J.) in 2018 for a grant *pendente lite* pursuant to s. 27(7) of the 1965 Act, the grounding affidavit of the first defendant who, as I said, is not related to the Deceased, incorrectly stated (at para. 7): -

“The deceased was survived by his sibling, brother, Arthur Kearns and his niece Celia Flood. They are the only surviving relations of Christopher Kearns deceased. There are no persons other than the persons referred to heretofore who would be entitled to a share in the administration intestate estate [sic] of the deceased”.

18. This information was completely incorrect and demonstrates that, in probate applications, particular care should be taken to ensure that full information is given to the Court as to the family members who stand to benefit on intestacy, where that is relevant. This will usually require that a family member should swear the affidavit. Furthermore, if – as in this case – the deponent is not a family member, their means of knowledge should be stated.

19. In particular, it is not enough to say who “*survived*” the deceased as this term is used colloquially to identify the deceased’s closest relations and this is often not one

and the same as the persons entitled on intestacy. As the facts of this case demonstrate, although the original plaintiff was the Deceased's sole surviving sibling and his closest surviving relative, he was far from the only person entitled on intestacy.

20. The provisions of s. 69 of the 1965 Act are clear: where a person dies leaving neither spouse, nor civil partner, nor issue, nor parent, and where they are survived by at least one sibling, the children of any pre-deceased sibling take their parent's share *per stirpes*.

21. Similarly, where a person dies leaving a surviving spouse or civil partner and "issue" (which includes, but is not limited to, children), the issue will take *per stirpes* in accordance with s. 67B of the 1965 Act. There are many cases where, unfortunately, a person is pre-deceased by one of their children, and where that child is survived by children or other issue. In those cases, the persons who might stand to benefit on intestacy are not just the surviving children but include the issue of the pre-deceased child.

22. In any of those circumstances, it is necessary for the purposes of an application to the probate court for the family member to state positively the total number of children or siblings of the deceased, as the case may be, whether or not they survived the deceased. It should then be stated positively whether the deceased did or did not have a pre-deceased child or sibling, whichever is relevant to the particular estate. Where there is one or more pre-deceased children or siblings, it will also then be necessary to identify whether the pre-deceased child had issue or whether the pre-deceased sibling had children. The advantage of requiring these matters to be specifically stated in the affidavit is that the family member swearing it will have to give explicit instructions on this point, reducing the risk of error in the affidavit.

23. In short, it is not sufficient merely to identify how many of those children or siblings survived the deceased, as this runs the risk of failing to identify all of the persons entitled on intestacy.

24. As it happens, the Order that was made by Baker J. in 2018 would have been appropriate no matter what how many people were entitled on intestacy, should the Will be found to be invalid, and I assume that this was a simple error in the information given to the first defendant as she herself might well not have known of the Deceased's other family members and, in particular, the fact that he had five siblings who had pre-deceased him.

25. It is, nevertheless, entirely unacceptable that an affidavit containing a wholly inaccurate averment was sworn and put before this Court.

26. I would also add that in these proceedings, it is pleaded that the original plaintiff and surviving brother of the Deceased was his "*heir in law*", presumably a reference to an heir at law who would have succeeded to freehold property by descent. That concept is no longer relevant to modern estates as it was abolished (save for entailed estates) by s. 11 of the 1965 Act. The earlier laws on devolution by descent, whereby real property vested directly in the heir at law on an intestacy, were abolished so far as registered lands was concerned by the Registration of Title (Ireland) Act, 1891, and so far as unregistered land was concerned, by the Administration of Estates Act, 1959: see discussion in *Wylie on Irish Land Law* (6th ed., Bloomsbury, Dublin, 2020) at paras. 17.05 to 17.06.

27. The phrase "*next of kin*", although often used colloquially to refer to a deceased's closest surviving relatives, is used in s. 70 of the 1965 Act to refer to the potential intestate successors of a deceased who is not survived by a spouse (or civil partner), issue, parent, sibling, or any child of a pre-deceased sibling. In other words, it

describes more remote relations, such as cousins. However, it is often used in probate applications – and was used in the Statement of Claim in this case - in its colloquial meaning. This is liable to confuse. As the facts of this case demonstrate, the sole surviving sibling of a person – though he or she might well be described in a non-legal context as the “*next of kin*” of that person – is not regarded as “*next of kin*” within the meaning of the Succession Act, 1965. Furthermore, where the deceased dies leaving neither spouse, nor civil partner, nor parent, nor issue, the “*next of kin*” (in the colloquial sense) may not be the only person entitled to succeed on intestacy, even where they are the closest relation.

28. Insofar as either of the terms “*next-of-kin*” or “*heir [at] law*” were referred to in the Statement of Claim for the purposes of pleading that the original plaintiff was entitled to succeed on intestacy to the entire estate of the Deceased, that was incorrect.

29. In any event, this application being outside the scope of the *Re Hannon* judgment and jurisdiction, I made an Order refusing the application for a grant pursuant to s. 27(4) of the 1965 Act. The only Order made, therefore, was one substituting Arthur Kearns, junior, as plaintiff in place of his father, the original plaintiff, who is himself now deceased.