

THE HIGH COURT

[2024] IEHC 426

[Record No. 2022/4989 P]

IN THE MATTER OF THE ESTATE OF MARY ANN HORAN (OTHERWISE
MAUREEN HORAN) LATE OF 15 RAMOR PARK, BLANCHARDSTOWN IN
THE COUNTY OF DUBLIN, DECEASED

BETWEEN

SHANE McNAMARA

PLAINTIFF

AND

DERMOT HORAN

DEFENDANT

JUDGMENT (No. 2) of Mr. Justice Cregan delivered on the 4th day of July 2024

INTRODUCTION

1. The plaintiff is the court-appointed administrator of the estate of Mrs. Mary Ann Horan, deceased. He is a practicing solicitor in the firm of John O'Connor Solicitors in Dublin. The defendant is a son of the deceased.
2. The plaintiff seeks declarations that the defendant unlawfully set up a joint account with his mother when she was suffering from dementia and that he unlawfully withdrew monies from this account over a period of time; he also seeks an order directing the defendant to repay to the estate all the monies he withdrew from the account, in the sum of €192,000 approximately.

3. Mrs. Horan was a wealthy woman. In her will, made in 2006, she left her estate of over €6 million to her four children, Dermot, Josephine, Stephen and Yvonne. She also appointed the defendant as sole executor of her estate and trustee of her will. Mrs. Horan died in 2018. Her husband had predeceased her, in 1998.
4. The principal asset of the deceased was a substantial industrial property which she owned at the Fonthill Industrial Park, Clondalkin, Dublin which yielded to her the gross annual sum of €264,284 in rental income. This rental income was habitually paid into an account in her sole name at the Bank of Ireland.
5. In her will, Mrs. Horan left specific bequests to Mr. Dermot Horan, leaving him her home at Ramor Park in Blanchardstown (with a valuation of €460,000) and the entire shareholding of the family company, Westwood International Transport Ltd (which had a value at the time of €496,000 approximately). In the circumstances, Mr. Dermot Horan was left a sum of almost €1 million entirely for his own use, by his mother, as well as a 25% share in all the remaining assets.
6. The plaintiff's case is that, from 2014 onwards, the deceased was suffering from dementia and was unable to manage her own affairs. The plaintiff contends that, despite this, in or about April 2015, the defendant (i) opened a joint account in his name and that of his mother; (ii) that he redirected the annual rent of €264,000 approximately from his mother's account to this joint account; and (iii) that he then withdrew all the funds from this account between April 2015 and April 2016 in the sum of over €192,000 and used them for his own benefit.
7. The plaintiff contends that, as a result of the actions of the defendant, the deceased's estate has been deprived of a substantial sum of money and that it must be returned to the estate. The plaintiff also pleads that, insofar as these transactions are

concerned, the deceased acted under the undue influence of the defendant and/or that the actions of the defendant were unconscionable.

BACKGROUND TO THESE PROCEEDINGS

8. There is a considerable history of acrimony between the defendant, Mr. Dermot Horan, and his siblings, Ms. Josephine Horan, Ms. Yvonne Horan and Mr. Stephen Horan. Given the evidence which I have heard in these proceedings and in related earlier proceedings, I have no doubt that the blame lies entirely with Mr. Dermot Horan. His conduct, at all times, in relation to the manner in which he denied his mother's mental condition, took advantage of her inability to manage her own affairs, and the manner in which he sought to control and administer her estate, show a pattern of disturbing and indefensible actions taken by him. These began to manifest themselves in or about September 2014 when his mother was admitted to hospital.

(i) Mrs. Horan's admission to hospital in September 2014

9. Ms. Josephine Horan gave evidence that her mother was in some pain and discomfort at the end of September 2014, so she (Ms. Josephine Horan) rang an ambulance to bring her mother to Blanchardstown Hospital. Mrs. Horan was admitted to hospital complaining of abdominal pain and back pain and she was cared for by a surgical team within the hospital. Ms. Josephine Horan said that her brother, Dermot, was not in agreement that her mother needed to go to the hospital. However, it is clear that Mrs. Horan was in need of medical attention and she remained in hospital for a considerable period of time. Unfortunately, whilst Mrs. Horan was in hospital, she had a fall and had to remain in hospital for a further period of time. In fact, Mrs. Horan remained in hospital from September 2014 until July 2015 – a period of 329 days.

10. Ms. Josephine Horan also gave evidence that, despite the care which her mother needed, Dermot discharged his mother from the hospital in or about July 2015 against medical advice. Dr. Eamon Dolan, a consultant geriatrician at the hospital, gave evidence that Mrs. Horan left hospital against medical advice on 22nd July 2015.

11. Ms. Josephine Horan gave evidence that she was so concerned at her mother's unauthorised discharge from the hospital in July 2015 that she contacted the nurse on duty and emphasised to her that the hospital had a duty of care to her mother. As a result, the hospital requested a team of Gardaí appear at Mrs. Horan's home to see if she would return to the hospital, but neither Mr. Dermot Horan nor her mother consented to that. Of course, at that stage, as the medical evidence set out below shows, Mrs. Horan was not in a fit condition to make any judgment about her own medical condition.

12. Indeed, the hospital was so concerned that Mrs. Horan was discharged that the clinical nurse manager rang on two or three successive days to see whether Mr. Dermot Horan was prepared to bring her back voluntarily and he said he would not do that. He said there was no medical reason for her to go back.

13. Ms. Josephine Horan gave evidence that she and her other siblings were concerned that their mother was suffering neglect in Dermot's care when she was at home and especially after he arranged her discharge from the hospital in July 2015. The other siblings wanted to get carers in 24 hours a day, but Dermot refused to agree to that.

14. An example of Mr. Dermot Horan's extraordinary unreasonableness in relation to this matter was that he refused to agree to equal decision-making about matters concerning his mother with his three siblings. Mr. Stephen Horan's evidence was that Mr. Dermot Horan said that his three siblings could be equal beneficiaries,

but they could not have equal decision-making power and that he, Dermot Horan, was the best placed to make decisions about their mother.

15. In response to a question from the court as to why, given their mother's wealth, she did not have a cleaning lady or any carers, Ms. Horan replied:-

“He wouldn't allow her in. He wouldn't allow any cleaners. He wouldn't allow any carers in... So, yes, no, I had real concerns of – he – he wasn't – he wasn't a devoted son, sadly. He had his own agenda. He wanted to have control of her finances.” (Transcript, 19th December 2023, p. 96)

16. Subsequently, in or about September 2015, his mother had another fall and was readmitted to Blanchardstown Hospital on 30th September 2015.

(ii) Application to have Mrs. Horan made a Ward of Court

17. Ms. Josephine Horan, Ms. Yvonne Horan and Mr. Stephen Horan, the other children of Mrs. Horan, were so concerned at the manner in which Mr. Dermot Horan was looking after their mother that they decided to apply to the President of the High Court to have her made a ward of court. A copy of the High Court order making Mrs. Horan a ward of court was produced in court in evidence.

18. The order making Mrs. Horan a ward of court recites the fact that the court heard submissions on behalf of counsel for the petitioner, counsel for the Health Service Executive and also heard Mr. Dermot Horan in person. The Court also considered medical affidavits from Dr. Siobhan Kennelly and Dr. Eamon Dolan, both filed on 2nd July 2015. In addition, further medical evidence was given by Dr. Anne Leader, dated 2nd July 2015, and Dr. Orla Donoghue, dated 20th August 2015.

19. Having considered the evidence and the submissions, the President of the High Court (Kearns P.) declared that Mrs. Horan was of unsound mind and incapable of

managing her person or property and, on 31st August 2015, ordered that she be made a ward of court.

20. Given that medical evidence was given at this wardship application in or about July 2015 and given that the joint bank account was opened in April 2015, the medical evidence at that time is relevant to these proceedings.

The evidence of Dr. Siobhan Kennelly

21. Dr. Kennelly swore an affidavit in the wards of court application and exhibited her medical report. In this affidavit, she said she had been acquainted with Mrs. Horan and acted as her medical attendant for a period of twelve weeks. She said on 5th January 2015, she visited Mrs. Horan at Connolly Hospital at the request of her son, Stephen, and personally examined her on a number of occasions for the purposes of ascertaining her mental capacity. In her medical report, she concluded that Mrs. Horan was suffering from dementia and was incapable of managing her own person and property.

The evidence of Dr. Eamon Dolan

22. Dr. Eamon Dolan, who, as set out above, was a consultant geriatrician at Connolly Hospital, Blanchardstown, also swore an affidavit in the wards of court application. He said that he had been acquainted with Mrs. Horan for a period of six months and had acted as her medical attendant during this time. He said that on 1st April 2015, he visited Mrs. Horan at Connolly Hospital at the request of her son, Stephen, and personally examined her for the purposes of ascertaining her mental capacity. In his affidavit, he concluded from his report that Mrs. Horan was suffering from dementia and was incapable of managing her own person and property.

23. Dr. Eamon Dolan exhibited to his affidavit an "*Assessment of Capacity Report*" dated 1st April 2015. In his report, Dr. Dolan concluded that Mrs. Horan

lacked capacity to make a decision to which s. 21 of the Nursing Home Support Scheme Act refers at the time of the assessment.

The evidence of Dr. Anne Leader

24. In addition, medical evidence was furnished at the wards of court application by Dr. Anne Leader, consultant psychiatrist at Bon Secours Hospital, Glasnevin, Dublin 9. Her report is dated 2nd July 2015 and was furnished to the Wards of Court Office. Dr. Leader carried out her assessment of Mrs. Horan on 1st July 2015 in Connolly Hospital. Dr. Leader concluded that Mrs. Horan was “*suffering from dementia*”. She said:-

“Dementia is a progressive irreversible disorder. Her dementia is of such severity as to make her of unsound mind and incapable of managing her affairs.”

25. She also concluded that Mrs. Horan was currently in a ward in a general hospital where she was at risk of developing hospital acquired infections and that her needs would be better served in a suitable nursing home environment or in a home environment provided she had full 24/7 appropriate care and attention. She also noted that Mrs. Horan had been an in-patient for a considerable time.

Dr. Donoghue

26. In addition, Dr. Orla Donoghue, consultant geriatrician at Connolly Hospital, assessed Mrs. Horan on 19th August 2015. She concluded that Mrs. Horan “*has a moderate to advanced dementia with cognitive deficits in multiple domains*”. She also concluded:-

“On the basis of this, she lacks capacity with regard to financial or healthcare decisions. The dementia is progressive and the expectation is she will continue to deteriorate.”

The social worker report

27. On 17th August 2015, a social worker prepared a report for the High Court to provide the court with information relating to Mrs. Horan's situation in the ward of courts application. The social worker, Ms. Pauline Ducray, was a senior caseworker/social worker employed by the HSE for the protection of older people in the Dublin Northwest area. Ms. Ducray had been in this position since September 2007 and was an experienced social worker. It appears that the hospital manager and a medical social worker, both of Connolly Hospital, referred Mrs. Horan to the HSE social worker on 23rd July 2015 (the day after Mr. Dermot Horan discharged his mother from hospital) because, as the report said, *"risk concerns were heightened as Maureen had been assessed and found by two separate consultant geriatricians as not having capacity to make decisions"*. Despite this, *"The reason for the referral was that Maureen [Mary Ann Horan] who had been an inpatient at Connolly Hospital for a period of nine and a half months was taken home to the above address by her son Dermot Horan without being medically discharged (22nd July 2015)"*. The social worker was asked to do a community visit to assess whether Mrs. Horan was at risk in her home. A joint visit with Ms. Bridget Kelly, the public health nurse, was completed on 24th July 2015.

28. The social worker and public health nurse found no evidence of any immediate risk to Mrs. Horan and that she presented as being well cared for. There was, however, some evidence of neglect in terms of the home environment. However, it was clear from this report that the position of Mrs. Horan in her own home was less than ideal. She was being cared for exclusively by her son, Dermot, but there were no carers apart from her son and she needed round-the-clock carers. The condition of the house left something to be desired and the kitchen appeared to be in an unhygienic

state. The social worker recommended that there should be a professional cleaning of the house to prevent any hygiene-related risks, that all of the adult children needed to have appropriate access to their mother, and that additional carers should be retained to meet the personal care and safety needs of Mrs. Horan. Structural changes such as the building on of a bathroom facility also needed to be made to her home.

29. It is clear that the other three siblings were very unhappy that Mr. Dermot Horan had discharged his mother from hospital without medical approval, that he appeared to be their mother's sole carer, that he was not looking after her properly, that he was not allowing them full access to their mother whenever they wished and that the conditions in the house were substandard. This is all the more extraordinary in circumstances where Mrs. Horan was a wealthy woman who had an annual income of over €264,000 from rental income and, therefore, could easily have afforded round-the-clock nursing care and a cleaning person to clean the house once or twice a week.

30. Despite the fact that there were medical reports from no less than four medically qualified people (e.g. consultant geriatricians or consultant psychiatrists) all attesting to the fact that Mrs. Horan had dementia and was incapable of managing her own affairs, Mr. Dermot Horan contested each and every one of these medical reports and sought to argue that there was nothing wrong with his mother, that she was mentally well and able to look after her own affairs. Such a position adopted by Mr. Dermot Horan can only be regarded as unreasonable.

(iii) The injunction application taken by the nursing home

31. Mrs. Horan continued to remain in hospital after being made a ward of court and was then transferred to a nursing home in mid-2016. Mr. Dermot Horan visited his mother each and every day and apparently spent some seven to eight hours each day with her, according to his own evidence. However, his activities at the nursing

home and his interference with other patients caused concern in the nursing home. Mr. Dermot Horan was, according to his own evidence, helping other patients (e.g. to go to the bathroom) but only because, he said, the nurses were short-staffed. However, his activities in visiting his mother and interfering with the care of other patients at the nursing home were so unacceptable that the nursing home was forced to bring an injunction before the High Court to restrain his activities. Having read the affidavits and having heard the submissions of the various parties, the President of the High Court (Kelly P.) accepted undertakings from Mr. Dermot Horan to cease and desist, and made an order on 11th July 2016 in the following terms:-

“And Dermot Horan undertaking to the court that his visitation to the ward at Ratoath Manor Nursing Home pending further order of this Court will be as follows:

- (1) Dermot Horan’s visitations will be limited to supervised visitations which will take place in the visitor’s room of Ratoath Manor Nursing Home between 2pm and 4pm daily from Monday to Friday,*
- (2) Dermot Horan will give telephone notification of one hour in advance of his attendance at Ratoath Manor Nursing Home,*
- (3) Dermot Horan will desist from attempting to administer any personal care or food or fluids on to the ward, and*
- (4) Dermot Horan will desist from interfering with the care of any other residents of Ratoath Manor Nursing Home.”*

32. However, these undertakings were not honoured. The nursing home was not satisfied that Mr. Horan was abiding by the terms of his undertakings and the matter came back before the High Court (Kelly P.) on 21st November 2016. On this occasion,

the President of the High Court made orders (rather than accepting undertakings) in terms of the undertakings given by Mr. Dermot Horan at (1) to (4) set out above.

33. Remarkably, this again did not appear sufficient and the matter came back before the High Court again when the nursing home brought an order for attachment and committal against Dermot Horan for breach of the High Court order of 21st November 2016.

34. On 8th May 2017, the High Court (Kelly P.) made an order that:-

(1) In lieu of ordering that the respondent, Dermot Horan, be committed to prison that the said Dermot Horan be restrained from having any visits with his mother at Ratoath Manor Nursing Home until further order of this Court;

(2) That the matter be listed for review on 17th July 2017.

35. Ms. Josephine Horan gave evidence that the nursing home had to take action to ensure that Dermot Horan's visits to his mother were supervised. Ms. Horan stated as follows:-

“Yes, I mean that’s a very sad thing to say, but the home with the ward of court put in supervised contact with Dermot. Yes, it was in the papers. But they took that measure because she was on – she had to be quite careful with what she ate and he would bring in, like, bits of sausages in his pocket to feed her. And also, you know, we talked earlier about the hospital staff – when she was in the hospital, he would help. He would, ‘help other patients’. He was also doing that in the home. And the family members of the residents complained about him to the manager and said, like, you know, ‘why is he going near my mother and father or whatever’. They didn’t want him – you know, he wasn’t a member of staff and he was doing various things. Probably,

in his view, helpful things, but the members, the family members complained about him. So, with that in conjunction with him, kind of just like – he's just so unsuitable, you know.” (Transcript, 19th December 2023, p. 101)

36. Ms. Horan also gave evidence that her brother, Dermot:-

“had supervised contact. He was allowed to have supervised contact once a week or something like that. But he couldn't see her on his own because he was deemed a risk to her.” (Transcript, 19th December 2023, p. 103).

(iv) Removal of Mr. Horan as executor

37. Mrs. Horan died on 19th April 2018 and Mr. Dermot Horan was the sole executor and trustee of her will. However, Mr. Dermot Horan so misconducted himself in the conduct of the executorship that his siblings brought an application to have him removed as executor. The High Court made an order on 13th March 2020 directing his removal as executor and gave liberty to the plaintiff solicitor as administrator to apply for a grant of administration in the estate of the deceased.

(v) Construction of the will proceedings

38. Shortly thereafter, there was a dispute between the plaintiff, as the court-appointed administrator of the estate, and Mr. Dermot Horan about the interpretation of, and construction of, his mother's will. As a result, plaintiff was forced to issue a construction summons in order to obtain the the court's judgment on the proper interpretation of the will. In my first judgment in these proceedings delivered on 24th July 2023, I gave my judgment on the proper interpretation of the will. I would note for the purposes of this judgment that the plaintiff, Ms. Josephine Horan, Ms. Yvonne Horan and Mr. Stephen Horan were all of one mind about the proper interpretation of the will, whereas Mr. Dermot Horan argued on his own for a different interpretation of the will. I held in favour of the plaintiff's interpretation of the will.

(vi) Removal of Mr. Horan as trustee

39. Subsequently, the plaintiff brought an application that the defendant should be removed as a trustee of the said will, and I made an order removing Mr. Dermot Horan as a trustee of the said will. He clearly was an unfit person to remain as a trustee.

THE ISSUES IN THESE PROCEEDINGS: THE MEDICAL CONDITION OF THE DECEASED

40. The plaintiff's case against the defendant is that the deceased was, at all material times, a person of unsound mind incapable of managing her financial affairs, that the defendant was in a position to exercise undue influence over her, that the defendant failed to act in her best interests and acted in his own best interests at all times, that he unlawfully set up a joint account, that he arranged for all the rental income to be placed into that joint account and that he then removed funds from that joint account for his own benefit in the sum of €192,000 approximately.

41. In order to consider these claims made by the plaintiff, it is necessary to first consider the medical condition of the deceased at the relevant times.

The oral evidence at this trial

42. Because Mr. Dermot Horan contested all the medical evidence in the wardship application, the plaintiff had to call medical evidence before this Court in these proceedings to establish the medical condition of Mrs. Horan in 2015. The first witness was Dr. Eamon Dolan.

Dr. Eamon Dolan's evidence

43. Dr. Dolan's evidence was that his assessment of Mrs. Horan was not based on one meeting, but based on a series of meetings with the patient. His opinion on 1st April 2015 was that Mrs. Horan was suffering "*significant dementia and was*

unfortunately of unsound mind and was unable to manage her financial affairs on that date". In his oral evidence, Dr. Dolan said that the dementia would have been moderate at the onset but would have progressed to become more severe as time went on, and that, in his opinion, at the time he examined her, Mrs. Horan suffered moderate to severe dementia. In response to a specific question by counsel for the plaintiff, Dr. Dolan stated that he would be very concerned about Mrs. Horan opening a new account given her mental fragility at that time.

44. Dr. Dolan was cross-examined by Mr. Dermot Horan. Mr. Dermot Horan has no medical experience or qualifications whatsoever and he called no medical evidence to back up his view that there was nothing wrong with his mother. He suggested to Dr. Dolan that this was the first time he had ever met Dr. Dolan, even though he was a daily visitor to his mother in the hospital during her first stay in the hospital, which was for a period of over nine months, and also on the second occasion, for five or six months. Dr. Dolan confirmed that he had no recollection of meeting Mr. Horan but indicated that he could have met other members of the family. Mr. Horan put it to Dr. Dolan that there was no problem with his mother's cognition and Dr. Dolan rejected that entirely. Dr. Dolan emphasised that the assessment was based on a consistent pattern which he and other medical professionals in the hospital noted after interacting with Mrs. Horan on a daily basis over a long period of time.

45. Mr. Horan's cross-examination of Dr. Dolan was ineffectual. He spent most of his time making statements instead of asking questions. In my view, he did nothing to undermine the evidence of Dr. Dolan.

The evidence of Dr. Anne Leader

46. Dr. Leader also gave oral evidence in the High Court during these proceedings. Dr. Leader is a consultant geriatrician in the Bon Secours Hospital. She

gave evidence that she visited Mrs. Horan in Blanchardstown Hospital in July 2015 for the purposes of carrying out an assessment of her mental status for the Wards of Court Office. Dr. Leader was not treating Mrs. Horan directly but simply assessing her for the purpose of the petition to make her a ward of court. Dr. Leader visited Mrs. Horan in the hospital, looked at all the records, spoke to the nursing staff and carried out an assessment on Mrs. Horan. She met Mrs. Horan on 1st July 2015. Her assessment, based on conversations which she had with Mrs. Horan and a review of her medical records, was that Mrs. Horan was “*very cognitively impaired*”. Dr. Leader said it was “*a very clear cut case*” that she was not fit to manage her affairs, that she had dementia and that she was of unsound mind.

47. Dr. Leader was cross-examined by Mr. Horan. It was only at this point in the conduct of his defence that it became clear that Mr. Horan had a belief that there was a conspiracy among the medical profession to diagnose his mother with dementia and to have her admitted to a nursing home. Mr. Dermot Horan stated in one of his questions to Dr. Leader:-

“MR. HORAN: But I do believe that there is – there is a sort of – a calculated attempt by the – there is effectively an industry around putting people into – first of all removing them from control of their own affairs and putting them into nursing homes.

JUDGE: This is really – this is really the heart of the matter isn’t it, Mr. Horan. It’s now becoming clear to me that you believe that there is a conspiracy among the medical profession to actually diagnose your mother with dementia. Is that your case? Is that your case?

MR. HORAN: I suppose it is really, medical and effectively legal, because the Ward of Court system was –

JUDGE: So there's a conspiracy among the medical profession to diagnose.

MR. HORAN: I'm not – it sounds very – I take – like it seemed to be, like, a collusion.”

And a few moments later, the following exchange took place:-

“JUDGE: You can put to this witness quite properly, Mr. Horan, and ask her whether she was part of a conspiracy among medical professionals to diagnose your mother as having dementia.

MR. HORAN: That's an extraordinarily serious allegation, Judge.

JUDGE: Well, that's what you've just said was the issue, so please put it to this witness.”

48. Mr. Horan then seemed to resile from that position by saying:-

“Well, I'm not necessarily saying that. I'm just simply saying that it's just an extraordinary coincidence that with respect that I wouldn't be present even just a certain amount of space away at the time when these cognitive function tests are being done.”

49. Mr. Horan subsequently said *“I believe that there is effectively an industry involved in this whole situation to make elderly people and/or vulnerable people subject to the interests of the State”.*

50. Dr. Leader denied that there was any conspiracy among medical professionals to classify patients as having dementia, saying:-

“I can reply. First of all, I'm completely independent from all the other doctors in the hospital and I am brought in to be independent for the protection of people like your mother, so there is no way that her treating doctors could treat her, you know, do something wrong to her. And there is a protection. That's our job as the Wards of Court. It's an extra layer of

protection for vulnerable demented patients and I assure you that I carry out my examinations – if I felt I needed to speak to a member of the family, I would have spoken to a member of the family and often have. But I didn't need to. The evidence in this case to me was so obvious that I felt I had complied with all the examination necessary to make my decisions. And, you know, I was 100% satisfied that it was the right decision."

Conclusions on Mrs. Horan's condition

51. In the light of the overwhelming medical evidence, I find as a fact that Mrs. Horan was suffering from dementia from 2014 to the date of her death in 2018. All of the medical evidence put forward by the plaintiff justifies this finding and there is no contrary medical evidence put forward by the defendant. Indeed, it is difficult to understand the defendant's insistence that his mother was not suffering from dementia. He seemed to wilfully close his eyes to the obvious fact that his mother was suffering from dementia in the last years of her life. His retreat into conspiracy theories was simply nonsensical.

52. It is also clearly the case that the defendant's behaviour, in certain respects, was distinctly odd. Whilst visiting his mother on a daily basis in the hospital or nursing home and staying for a period of seven or eight hours could be regarded as admirable and indicative of a dutiful and loving son, his behaviour in seeking to assist other patients was clearly unacceptable behaviour by the defendant.

THE OPENING OF A JOINT BANK ACCOUNT AND THE REMOVAL OF MONIES

53. I turn now to consider the central issue in this case, namely the alleged wrongful withdrawal of monies by the defendant. The plaintiff's allegation against the defendant is that, although his mother's only source of income was the rental income

which she received and which was paid directly into an account in her name, the defendant opened a joint bank account in his name and that of his mother, ensured that the rental income was then paid into this bank account, and, over a period of eighteen months, removed €232,000 from this account. I will now set out the evidence on this issue.

(i) The evidence of the plaintiff, Mr. Shane McNamara

54. Mr. Shane McNamara is a practicing solicitor in the firm of John O'Connor Solicitors in Dublin. He is the court-appointed administrator of Mrs. Horan's estate after Mr. Dermot Horan was removed by the High Court as executor, on 13th March 2020. After his appointment, he began making inquiries as administrator about the assets of the deceased. Mr. McNamara's evidence was that he found the affairs of the estate generally in disarray. He said it was clear that the estate was significant and it was also clear that certain issues had not been attended to for some time.

55. The primary asset of the estate was the property at 12 Fonthill Industrial Park, which yielded a rental income of approximately €264,000 per annum. Mr. McNamara discovered that no probate valuations had been obtained and no income tax returns had been filed for some time. The other asset which was of some importance was Westwood International Transport Ltd, a family company, which was owned by Mrs. Horan. Mrs. Horan and her son, Dermot Horan, were the directors of this company. The company, however, had been struck off for failure to file annual returns. The Wards of Court Office had done work to reinstate the company prior to the appointment of Mr. McNamara as administrator. The company had been struck off in or about 2012 and was reinstated at the end of 2016.

56. Mr. McNamara gave evidence that he had noticed that a joint account had been opened in the name of Dermot Horan and Mrs. Horan. The account had been

opened in April 2015. The names on the account were Maureen Horan and Dermot Horan. The account number was 91141078.

57. The documents required to open the account with Bank of Ireland were admitted into evidence in court. The purpose of the account was stated to be rental income/expenses. The form was signed by Mr. Dermot Horan. The second applicant was stated to be Maureen Horan and her signature also appears on a signature page. The paperwork to open the account appears to have been filled in on or about 14th April 2015. The applicants to open the new account were stated to be Mr. Dermot Horan, company director, and Mrs. Maureen Horan, company director. The address for the first applicant, Mr. Dermot Horan, was given. This was the address of the company (i.e. Westwood International Ltd). The address of the second applicant, Mrs. Maureen Horan, was given as 15 Ramor Park, Blanchardstown, Dublin 15, the address at which she resided.

58. The first statement date was 30th April 2015. The first payment in was a payment of €34,284.00 on 22nd April 2015, being the first payment of rent by the tenant in the industrial premises. A week later, i.e. on 30th April 2015, the bank statement showed a payment out of €700.

59. The Bank issued two cards in relation to the account and the withdrawals from the account were made with the card issued to Dermot Horan. Evidence was produced in court of a spreadsheet of all of the places from which the money was withdrawn. All the money was withdrawn from Bank of Ireland branches in either Blanchardstown or Finglas.

60. Mr. McNamara's evidence was that the only monies coming into that account was the rental income from the Fonthill property. He said that, for a period of time, all of the rental income in relation to that property, which was the most significant asset

of the estate was paid into this account. A further rental payment of €66,071.00 was made into the account on 13th July 2015. Another payment in the same amount was made on 1st October 2015 and on 4th January 2016.

61. For a period of thirteen months from April 2015 to April 2016, a total sum of €232,449 was withdrawn by the defendant from this joint account. The withdrawals were taken in cash in amounts of €700 each from ATM machines at various locations, on an almost daily basis. The sums remained unaccounted for by the defendant.

62. Mr. McNamara gave evidence about the withdrawals on these bank accounts and the bank account statements were produced in court. It is clear that there was a consistent pattern of the sum of €700 being withdrawn from the account on a regular – almost daily-basis. €700 was the maximum amount which could be withdrawn from the bank via an ATM at that time. Mr. McNamara’s evidence was that all of the withdrawals (apart from three matters set out below) were from ATMs.

63. When one looks at the statements on the account, it is clear that regular withdrawals of €700 were made on the account. Thus, to take a short period, there are withdrawals of €700 on 6th May 2015, 8th May, 2015, 13th May 2015, 14th May 2015, 18th May 2015, 20th May 2015, 29th May 2015, 2nd June 2015, 8th June 2015, 9th June 2015, etc. This pattern continued throughout May, June, July, August, September, October, November and December 2015 and then into January, February, March and April 2016, until the entire account was emptied and a balance of €48.33 remained in the account.

64. Mr. McNamara’s evidence in relation to this account was that:-

“It would appear that for a period of time from in or around April 2015 for about a period of a year, rent – certain rental payments were paid into the account and then the account was systematically emptied.” (emphasis added)

(Transcript, 19th December 2023, p. 73)

65. In addition to these withdrawals of €700 per day, there was a withdrawal of €563.17, with a narrative of “VHI”, on 26th May 2015 and one or two other miscellaneous withdrawals of an amount less than €700.

66. In addition, on 26th August 2015, the sum of €39,000 was withdrawn from the account by means of a bank draft. None of the parties were able to produce the bank draft in court and the Bank of Ireland was also unable to produce a copy. Therefore, it was not known to Mr. McNamara to whom the bank draft was made payable. In any event, the bank draft was never encashed. The Bank of Ireland has since cancelled the bank draft and the sum of €39,000 has been credited back to the estate.

67. Mr. McNamara’s evidence was that the total sum withdrawn from the account over this time was approximately €232,449.00. This included the uncashed bank draft for €39,000. In addition, a sum of €8,900 in cash was found at Mrs. Horan’s home and this also has been credited to the estate. Mr. McNamara’s evidence was that the sum which remained unaccounted for amounts to the sum of €191,880.

68. When this account was discovered by the Wards of Court Office, it then ensured that the rental income was redirected to the Wards of Court account for the rest of the time whilst the deceased remained a ward of court.

69. Mr. McNamara gave evidence that he wrote to Mr. Dermot Horan on a number of occasions seeking explanations for these withdrawals and, despite the fact that Mr. Horan replied to some of these letters, no adequate explanation was provided by him.

70. Mr. McNamara did say that Mr. Horan put forward an explanation that some of the money was paid to retain a security man at the company’s premises. Mr.

McNamara asked for vouching documents in relation to that expenditure, but never received any.

71. Mr. McNamara's evidence was that, as at the date of giving evidence in court, he still had no idea what had happened to that money.

72. The plaintiff appointed solicitors, Messrs. O'Connell Brennan, for the purpose of initiating these proceedings. They wrote to Mr. Horan on 15th January 2021 raising questions about which the administrator was concerned. Again, however, no explanation of any kind was received from Mr. Horan.

73. Mr. McNamara also gave evidence that one of the assets of the deceased was the shares in the family company, Westwood Transport International Ltd. In her will, Mrs. Horan bequeathed these shares to Mr. Dermot Horan. Mr. Horan's explanation for where the money went was that he spent it on paying security men for the company. The fact that Mr. Horan would acquire the shares in the company on his mother's death meant that all payments made by him in respect of this company were primarily for his benefit only and not for the benefit of his mother, or for any of his siblings.

Evidence of Ms. Josephine Horan

74. Ms. Josephine Horan also gave the following evidence on this issue, saying:-

“Well, I suppose just what I'd say is that we always kind of had an idea that he was taking money. You know, we had that idea. But to see the whole, the systematicness of, you know, him going to a cashpoint every day and taking her money, it's just – I find it –

Question: Was it needed for her in any way, do you know?

Answer: No, it was not for her benefit at all. It was just –”

(Transcript, 19th December 2023, p. 102)

75. Ms. Horan gave evidence that, in her view, her brother, Dermot Horan was “stealing the money”. She said:-

“He was stealing the money for his own ends whatever they were. But it wasn’t his money to take. He stole our mother’s money from her.”

(Transcript, 5th March 2024, p. 59)

The evidence of Mr. Stephen Horan

76. Mr. Stephen Horan is one of the children of the deceased and the brother of the defendant, Dermot Horan. He is a social care worker working in homeless services. Before that, he worked as a lorry driver in the family business, Westwood International Transport Ltd, a company set up by his father. His father died in 1998 and, after that, Dermot continued on in the business for a number of years, but the trading in the business dwindled and it “got to the point that it wasn’t really trading” and there were “no trucks on the road”. Mr. Stephen Horan corroborated the evidence of his sister, Ms. Josephine Horan, in all respects. He gave evidence that he observed all of the signs of dementia in his mother over a long period of time. Mr. Stephen Horan also gave evidence that he was not aware of the existence of the account in question until it was discovered by Mr. McNamara and he said “I’m very alarmed by the ‘systematic nature of the withdrawals’ like €700 a day, day after day after day, very alarmed”. He said he had no idea what the money might have been used for and that only Dermot could answer that.

The evidence of the defendant

77. Mr. Dermot Horan, as a litigant in person, gave evidence on his own behalf. He was asked questions by the court and by counsel for the plaintiff.

78. Mr. Horan’s evidence was that his mother was mentally capable and that she knew what she was doing. He also gave evidence that he believed that the medical

evidence that his mother was suffering from dementia was not true. However, Mr. Dermot Horan has no medical expertise and he provided no medical evidence whatsoever to support his view.

79. Mr. Horan accepted that he opened the joint account. Mr. Horan also accepted that he was the person who made all the withdrawals from the joint account between April 2015 and April 2016.

80. Mr. Horan said that he used part of this money to employ a Mr. James Winston to provide security and keep watch on the company's property at the trade yard on the Navan Road for over four years. Mr. Horan also produced a letter from Mr. Winston to that effect. Mr. Horan's evidence was that Mr. Winston was employed from June 2016 to the end of January 2020 at a rate of €600 per week. However, given that all of the monies were withdrawn from the account between April 2015 and April 2016, and Mr. Winston was first appointed in June 2016, this evidence is not entirely credible – although I accept that some part of the monies was probably used to pay Mr. Winston. However, no vouching documentation was provided.

81. Mr. Horan's evidence was that he used some of the money he withdrew from the account to pay his own legal bills in respect of the ward of court application in the sum of approximately €16,000. He also said that he paid a further sum of €10,000 to another firm of solicitors for legal services to him which pre-dated this particular period.

82. Mr. Horan said that he also paid another individual €600 a week for about two and a half years to protect the yard. Again, no vouching documentation was provided. He also said he was paying all the company bills, e.g. electricity, etc., because he had no access to the company account and the company was not trading anymore. His best

estimate was that the electricity bills amounted to approximately €1,000 a month. He also said he paid €10,000 to fix the boundary fence.

83. Mr. Horan also said he bought two new digging machines. There was some confusion about the price of the digging machines according to Mr. Horan, but he accepted that they both amounted to a figure of approximately €60,000 or €65,000. Mr. Horan said he went up to the North of Ireland and bought these two diggers for cash and brought them back down to Dublin and intended to hire them out, but he was unable to do so. Mr. Horan said he still had one digger and the other digger he lent to his brother, Stephen.

84. Mr. Dermot Horan indicated that he believed that the bank draft was to pay for the insurance of the property belonging to the company. Subsequently, however, it appeared that insurance was not taken out and Mr. Horan stated to the court that he did not do anything with the bank draft and the €39,000 draft was subsequently cancelled.

85. In my view, Mr. Dermot Horan was not a credible or reliable witness in any way. He denied that his mother suffering from dementia despite the overwhelming medical evidence to the contrary; he denied that she got good care in the hospital or in a nursing home when all of the other evidence was that she was well cared for in both places; he discharged his mother from the hospital against medical advice when she was clearly not in a position to make an informed consent to discharge herself; he opposed the application to have her made a ward of court; his behaviour at the nursing home with his mother and with other patients was such that the nursing home had to apply to the High Court, not once, not twice, but three times to obtain and enforce undertakings and orders to compel him to reduce his visits to the nursing home, to stop interfering with other patients, etc. Moreover his evidence as to how he spent the

money was incomplete, uncertain and not credible. In addition, he had absolutely no records of what he spent the money on or vouching documentation. He really was unable to account for the vast majority of the expenditure.

86. Mr. Horan also sought to give evidence about a purported sale of land at Mulhuddart by his mother going back to 2001. In summary, Mr. Horan submitted that his mother sold land to another party in Mulhuddart in 2001 and that his mother's consent was not properly obtained. In my view, having heard Mr. Horan on this issue repeatedly, it was clear to me that this matter is completely irrelevant to any of the issues which I have to decide in this litigation.

87. On this issue, it appears from Mr. McNamara's evidence, that Mrs. Horan entered into a contract for the sale of land in April 2001. She sold the land for approximately £3.9 million. The sale of the land was completed and the money was received by Mrs. Horan subject to a deduction of legal fees. Subsequently, however, it appears that Mr. Dermot Horan tried to rescind the contract on the grounds that his mother's signature was improperly obtained. However, none of his siblings agreed with this approach and were of the view that when their mother had signed the contract in 2001, she was of sound mind at that time and she received the money.

88. Mr. McNamara also said in evidence that the land in question was owned by Westwood Transport International Ltd and, therefore, it was a matter for the company rather than for the estate of the deceased. As Mr. Dermot Horan was now the sole shareholder of the company, he could proceed with these legal proceedings through the company and there was nothing to stop him doing that according to Mr. McNamara.

89. It appears as if a protective plenary summons was issued on behalf of Mrs. Horan in or about 2006 but nothing was done in these proceedings between 2006 and

the date of Mrs. Horan's death. According to Mr. McNamara, the other three siblings did not want the administrator to pursue this litigation. They did not agree with any of the allegations that were made by Dermot Horan in respect of this matter. It was clear from the evidence that two firms of solicitors – the Wards of Court solicitors and Mr. McNamara – both examined the case and decided that it was not a meritorious case and that there would be an enormous costs order against the estate if the case went wrong. I am satisfied that this issue is not relevant to any of the issues I have to decide in this case.

The legal principles applicable to this case

90. I turn now to consider the legal principles applicable to this matter. There are two issues which I need to consider:

- (i) The issue of undue influence; and
- (ii) The issue of unconscionability.

The doctrine of undue influence

91. As is stated in *Keane on Equity and the Law of Trusts in Ireland* (3rd Ed.) (2017), para. 28.03:-

“As was made clear in the leading English case on undue influence, Allcard v. Skinner [1887] 36 CHD 145, CA the jurisdiction of equity to intervene in a transaction on the ground of undue influence arises in two broadly different categories. In the first there is a presumption of undue influence arising from the relationship of the parties. In such a case it will be assumed that the transaction being attacked was the result of undue influence unless the party presumed to exercise the influence can prove that the transaction was the spontaneous choice of the other party acting under circumstances which enabled him to make a free decision. The onus of proof in such cases, in short,

moves to the party alleged to have used the undue influence. In the second category of cases where no such relationship exists, the court only intervenes where the party alleging undue influence affirmatively proves that the transaction was its result.”

92. Keane then states, at para. 28.04:-

“In the first category of cases – where there is a presumption of undue influence – the presumption will arise where there are two elements present. First, one party must have derived a significant benefit from the transaction but most commonly this will arise where there is a substantial gift of property which cannot be accounted for by the motives which ordinarily actuate people. Second, the relationship between the parties must be such that the donor places a special degree of trust in the donee and the donee is in a position by reason of their relationship to exert a particular degree of influence on the donor. The law has recognised certain categories of relationships as being of this nature, such as parent and child, guardian and ward, solicitor and client, and trustee and beneficiary.” (emphasis added)

93. I have also considered the decisions in *Carroll v. Carroll* [1999] 4 IR 241 and *M.C. (A Ward of Court) v. F.C.J.H.* [2014] ILRM 1.

94. It is clear that the relationship of parent and child arises in this case. It is also clear from the facts of this case that Mrs. Horan suffered from dementia and placed a significant degree of trust and reliance on her eldest son, Mr. Dermot Horan. In the circumstances, therefore, there is a presumption of undue influence in present case.

95. Moreover, Mr. Dermot Horan derived a significant benefit from the transactions which *“cannot be accounted for by the motives which ordinarily actuate people”*.

96. Mr. Horan did not produce any evidence whatsoever to rebut the presumption that he exercised undue influence over his mother.

97. I am also satisfied that the evidence justifies, not just a presumption of undue influence, but a finding of fact that Mr. Dermot Horan exercised actual undue influence over his mother given his mother's dementia and ill health at the time. All the evidence establishes (a) her mental infirmity, (b) their close relationship, and (c) the undue influence which he exercised over her.

98. I am satisfied that the operation of the joint account and the withdrawal of funds by Mr. Dermot Horan were all for Mr. Dermot Horan's own personal advantage and not for any advantage which might accrue to his mother. There is not a scintilla of evidence that Mrs. Horan acquiesced to the setting up of the joint account, the withdrawals from the said account by Mr. Horan, or to the expenditure on any of the items outlined by Mr. Horan in his evidence.

99. I am also satisfied in the present case that the transactions carried out on this joint account were, from the point of view of Mrs. Horan, so improvident as to be set aside. There was no necessity to set up a joint account in both her name and that of her son; there was no necessity for her son to withdraw a sum of €700 on an almost daily basis throughout the year and none of the €192,000 was spent for the benefit of Mrs. Horan. Indeed, Mr. Dermot Horan did not even retain a cleaning person once a week or a carer on a few occasions a week to look after his mother's needs whilst she was living at home. Every single penny of the €192,000 went for the benefit of Mr. Dermot Horan and not for anyone else's benefit. I am satisfied, therefore, that all of these transactions should be set aside on the grounds of their improvidence.

The issue of unconscionability

100. As is stated in *Equity and the Law of Trusts in Ireland (Biehler)* (7th Ed.) at p. 913:-

“A transaction may be set aside in equity where one party is at a serious disadvantage by reason of poverty, ignorance or some other factor such as old age so that unfair advantage may be taken of that party. Equity will intervene particularly where a transfer of property is made for no consideration at all or at an undervalue and where the transferee acts without the benefit of independent legal advice.”

101. As is stated by Biehler, at p. 914:-

“A comprehensive statement of the essential preconditions for setting aside a transaction on grounds of unconscionability in English law is set out in the judgment of Peter Millet QC as he then was In Alec Lobb (Garages) Ltd v. Total Oil (Great Britain) Ltd [1983] 1 WLR 87:

‘First one party has been at a serious disadvantage to the other, whether through poverty or ignorance or lack of advice or otherwise so that circumstances existed of which unfair advantage could be taken. Second, this weakness of the one party has been exploited by the other in some morally culpable manner... and third the resulting transaction has been not merely hard or improvident but overreaching and oppressive... In short there must in my judgment be some impropriety both in the conduct of the stronger party and in the terms of the transaction itself... which in the traditional phrase “shocks the conscience of the court” and makes it against equity and good conscience for the stronger party to retain the benefit of a transaction he has unfairly obtained.’”

102. I am satisfied that all of these conditions are fulfilled in the present case. There is no doubt that Mrs. Horan was at a serious disadvantage to Mr. Dermot Horan given her dementia; secondly, her weakness was exploited by Mr. Horan in a morally culpable manner; thirdly, the resulting transactions were not merely improvident but overreaching and oppressive; fourthly, there is an impropriety both in the conduct of Mr. Dermot Horan and the terms of the transaction itself which has “*shocked the conscience*” of this Court and, therefore, makes it against equity and good conscience for Mr. Dermot Horan to retain the benefit of the transactions he has unfairly obtained.

103. I am of the view that it was simply unconscionable for Mr. Dermot Horan to deliberately open the account in joint names, to direct his mother’s rental income from the account in her sole name to the joint account, to make these near daily withdrawals of €700 over a period of a year amounting to a sum of over €192,000 and to spend this money on whatever he wished to spend it on. He used it as a “*slush fund*” to fund whatever he deemed appropriate. He used it to pay his own legal fees in contesting his mother’s application to be made a ward of court; he used it to pay off other legal bills he owed; he used it to buy two digging machines; he used it to employ a security guard to look after the yard which was owned by the company which he would acquire on her death. Mrs. Horan did not receive a single euro of these withdrawals of over €192,000. All of these actions by Mr. Dermot Horan can only be regarded as an unconscionable misappropriation of funds from his mother’s account at a time when she was suffering from dementia and was not in a position to understand what was being done or to consent to what was being done.

104. In particular, one is struck looking at the statements of account for the twelve-month period at the regularity of the pattern of withdrawals of the maximum amount

of €700. On each and every occasion that Mr. Dermot Horan went to an ATM and made such a withdrawal, he knew exactly what he was doing. He was withdrawing a sum of €700 from monies belonging to his mother, without the knowledge or consent of his mother or, indeed, of any of his brothers and sisters.

105. His use of that money for his own ends all show a devious attempt to take advantage of his elderly and infirm mother for his own financial ends. His behaviour was completely unacceptable, unconscionable and unlawful.

106. Whilst Mr. Horan might seek to argue that everything he did, he did for the good of the family, and whilst that might be his subjective belief, it is clear, objectively, that this was not true. In the circumstances, equity will intervene to right the wrong and to direct that he repay all the money to his mother's estate.

Conclusions

107. I have therefore concluded:-

- (1) that there is a presumption of undue influence in this case;
- (2) that Mr. Dermot Horan also exerted actual undue influence over his mother;
- (3) that Mr. Horan's actions – in opening the joint account, in redirecting his mother's rental income to this account, in withdrawing all the funds from this account and in spending all these funds for his own benefit – were unconscionable; and
- (4) that Mr. Horan will be ordered to repay the funds to the estate.