

RYAN, Ryan

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THE HIGH COURT

CIRCUIT COURT APPEAL

MARY RYAN

PLAINTIFF/RESPONDENT

-v-

ANTHONY RYAN

DEFENDANT/APPELLANT

COUNTY OF TIPPERARY

Judgment of Mr. Justice Ellis delivered the 12th day of January 1983.

By deed of 20th of July, 1973 in consideration of the natural love and affection which she bore to her son the defendant, and in order to make provision in life for him, the plaintiff transferred to him all the lands described in folio number 16824 of the County of Tipperary which included thereon a dwellinghouse, yard and out-offices and which is called Moher.

On the same date the parties executed a second agreement called a "Pocket Agreement" whereby the Defendant conferred certain rights of residence on the plaintiff and on his sisters Joan, Mary Brigid, and Teresa and on his brother Liam, and undertook the obligations as set out therein.



Both deeds were executed in the presence of Mr. Noel O'Meara Solicitor and were witnessed by him and drawn up in his Solicitors firm of Dudley & O'Meara.

These agreements in fact were made pursuant to a family agreement and arrangement, the terms of which had already been well discussed by the members of the family and agreed by them before July 1973. Some members of the family left it to their mother to do what was right by them in agreeing terms with the defendant.

The plaintiff is a widow whose husband died intestate in 1950 leaving her with six young children to bring up. She is now aged about 70 so that she was about 60 in July 1973 when she executed these deeds. The defendant is her third child and elder son. There is another son Liam and four daughters whose names I have mentioned.

The plaintiff took out a grant to her husband's estate in 1962.

Until July, 1973 the plaintiff ran the farm and made all the decisions with regard to its management.

The defendant was the only boy at home who partook full time in working on the farm from when he left school. The girls come and go at intervals. Brigid and Teresa are married and live away. Mary works and lives in Dublin and visits home from time to time. Joan had worked in Dublin

until her employment there ceased. She now lives at Moher with the plaintiff who resides there full-time as does Liam.

The essence of the family arrangement or agreement was that the defendant Tony was to get the farm, and that in return he was to pay sums of money agreed with his mother or with his brothers and sisters, or by his mother on their behalf, to her and each of them and in addition to agree to confer on them the various rights, including rights of residence and other undertakings as set out in the accompanying agreement of 20th July, 1973.

It appears that the various sums of money which the defendant agreed to pay and did pay to the members of the family under the family agreement were in fact paid and were accepted by each of them as having been paid by and accepted from the plaintiff as the personal representative of her late husband Richard Ryan in discharge of all claims each of them had against his estate, as evidenced by the various receipts. She in turn was paying these moneys with moneys paid and received from Tony together with the other rights which I have mentioned in their favour as agreed between the plaintiff and the defendant in return for the transfer by the plaintiff of Moher to him. In addition any financial claim he himself would have had against the estate but was not paid to him was included in the transaction, together with his liability to pay Solicitors costs and the stamp duty which in fact

he has paid.

If the estate of Richard Ryan deceased was to have been properly administered it is clear that the farm would have had to be sold and the net proceeds divided among the family according to their respective entitlement

The evidence indicates that the sum the defendant was to pay the plaintiff for division between herself and the other members of the family (except himself) was £2,800. I am satisfied, as indeed it was never really disputed, that it was the plaintiff herself who determined this sum which the defendant paid to Mr. O'Meara and which was then allocated or subdivided between the other members of the family including the plaintiff on her instructions. The Solicitors costs amounted to £375 and the stamp duty on the deed of transfer was £100. The full financial consideration in respect of the transaction which the defendant has paid is therefore £3,275.00. He has given evidence and I accept that he had to borrow the necessary money to pay this liability from the A.C.C. who have got a first charge on the land. In addition, since July 1973 the defendant has carried out and expended his own money on substantial works on the lands and dwellinghouse of Moher.

It will thus be seen that the deed of transfer of the 20th July, 1973 was far from being a transfer by the plaintiff to the defendant only for natural love and affection as stated therein and in the Civil Bill. It

may well have been intended, as was also expressed in the deed, that the lands were being transferred by the plaintiff to Tony to make provision for him for life, but the reality of the whole transaction was that it partook in part of a sale, in part of the administration by the plaintiff as personal representative of her late husband's estate, and in part as a family agreement or arrangement.

In May, 1981, that is about 8 years after its execution, the plaintiff instituted proceedings against Tony to set aside the deed of transfer of 20th July, 1973 on the grounds that the plaintiff was induced by Tony to enter into it by his undue influence and because it was improvident; that she had no independent advice, and because the deed had no revocation clause.

Briefly stated the acts of undue influence alleged in evidence were that the defendant was guilty of continuing misbehaviour towards his mother and other members of the family, constant quarrels with them, his failure and refusal to work on or manage the farm or to accept his mother's directions or advices, material interference with his mother's enjoyment of residence and claims amounting to demands for ownership of the farm whereby he wore out his mother by pressure or duress whereby in the end as she said she was forced to agree to transfer Moher to him for her peace of mind and to

avoid conflict. In fact she said that in 1972 he took over the place without her consent. These allegations have been contested by the Defendant or have sought by him to have been justified or provoked.

According to Mrs. Ryan the trouble began in 1968 and continued up to 1972 when she said he took command against her consent. However, Liam has stated that in 1966 his mother had said that no settlement would be made "for the present".

Mrs. Ryan has stated that a few weeks before the transfer was executed there was a family meeting at which Tony and the girls were present at which the various sums of money to be paid to them were agreed, and that Tony was to pay off a debt of £300 for money she had borrowed off Liam. Tony denies this.

She said she had no legal advice about these matters and the transfer, and said she had no discussion with a solicitor. She said "we had our minds made up when I went to a Solicitor through whom I knew it was to be done". She said she herself knew that the other claimants to her husband's estate had rights and that the members of the family (her children) knew or arranged that the monies which they were to get would be paid by Tony in discharge of their claims or shares of their father's estate. The amounts allocated to and accepted by them were not decided by Tony but by his

mother in agreement with them and accepted by Tony when he was told by his mother what he had to pay in return for the farm. He says he was asked by her for £2,800 which he paid. Mrs. Ryan seems to agree that this was so and I accept it. As I have already mentioned he was also to pay the solicitors costs and stamp duty and to confer rights on the various members of the family, that is in favour of his mother, sisters, and his brother in respect of Moher.

Notwithstanding her allegations of undue influence pre July 1973, the Plaintiff said the disagreement between her two sons Liam and Tony which arose over the purchase of Knockane in 1977 was the cause of all the trouble which has arisen.

I come however to the evidence and events leading up to and surrounding the execution of the two deeds on 20th July, 1973.

Although the plaintiff has stated and relies on the allegation that she was never a client of Mr. O'Meara and did not have his or a solicitor's advice, I am satisfied even on her own evidence and admissions on cross-examination that she was a client of his for many years prior to July, 1973 going back to the mid 1960's. She agreed she went to him about this transfer because he was a good solicitor and because she trusted him and that he was her choice. I am also satisfied that she sought and obtained

Mr. O'Meara's advices. She agreed that she told Mr. Noel O'Meara what she wanted done according to what she had previously arranged before "she left the house". When it was put to her by Mr. Budd that she went to Mr. N. O'Meara about the family arrangement and had discussed with him transferring Moher to Tony significantly she did not answer. The letters of 25th July, 1971, 4th December, 1971, 22nd March, 1973, and 10th March, 1973 from her to Mr. O'Meara show that she was looking for and getting solicitors advices since 1971 about making a settlement among her family and the transfer of Moher to Tony. Even subsequently in her letter of 5th June 1978 she was writing to Mr. O'Meara about matters arising out of the two agreements. These letters also are significant that they do not contain any allegation against Tony or mention of the matters now sought to be relied on as amounting to undue influence or pressure or duress. On the contrary they indicate that Mrs. Ryan was very much in charge and mistress of her affairs and of what she wanted done. She also admitted to Mr. Budd that at no time did she ever mention to Mr. O'Meara that she was transferring the farm to Tony for the reasons she now alleges namely under undue influence or pressure.

Mrs. Ryan agreed and accepted when it was put to her by Mr. Budd that she went to Mr. O'Meara for advice on the family arrangement she was making

and to have the documents for this purpose drawn up to carry it through.

She also agreed and accepted that all the children knew what was happening and that the transfer of Moher to Tony was contemplated and that all was discussed and agreed at home before she went in to have the documents drawn up by Mr. O'Meara. Mrs. Ryan mentioned in evidence that she kept a full diary of events at Moher in notebooks over the years including those relating to the events in issue in the case. She had a bag of such notebooks when giving evidence. She agreed that there was no reference or entry in any of them to acts of undue influence pressure or duress by Tony, or of the happenings she was alleging against him to cause her to transfer Moher to him.

In further cross-examination by Mr. Budd she agreed that when she was transferring Moher to Tony and making the arrangements of which this was a part she was then in good health and good mental clarity. Nine years later in the witness box she still clearly appeared to be in good health and mentally clear. It would be hard to find a lady who appeared less likely to accede to pressure or duress by her son of the kind alleged, and neither herself or her two daughters Joan and Mary or Liam either individually or all combined appeared persons who would be capable of entering into the arrangement of which the transfer to Tony was a part by

being browbeaten into it by him. To me ^{as they} ~~as~~ they appeared in the witness box and in giving evidence ~~they~~ and in particular Joan and Mary, and Mrs. Ryan herself, all came across as strong and forceful persons who are fully aware of their rights and not easily capable of being forced into anything they did not wish to do. As Mrs. Ryan said in evidence also in answer to Mr. Budd - "I knew what I was doing; I was clear about what I wanted and told Mr. O'Meara what I wanted and over a period of time I had thought about it carefully. I told Mr. O'Meara what I wanted done and what we had agreed".

She also said she told Tony what he was to pay and that she had agreed with Mr. O'Meara that this was £2,800 and also that she agreed with Mr. O'Meara the various sums each member of the family was to be paid and that she was to be paid £1,500. She also agreed that Tony had paid the £2,800 into Mr. O'Meara's office all of which was his evidence too.

I have given in detail all this evidence of Mrs. Ryan so that she can be clear that these admissions are quite incompatible with what she said in her direct evidence in support of her allegations that she signed over Moher to Tony under undue influence duress or pressure which so wore her down as to force her to give him the lands.

I am quite satisfied on Mrs. Ryan's own evidence and all the

surrounding circumstances that this family arrangement and the transfer of Moher to Tony were not due to undue influence by him as alleged. It is quite clear not only that Mrs. Ryan did what she did of her own free will, but that the terms and conditions of the family agreement were largely her terms with which the members of the family were in agreement and not Tony's terms. I am also satisfied that in doing what she did Mrs. Ryan was carrying out her duties as personal representative in administering her husband's estate as she thought best including the transfer to Tony. It is not necessary for me to decide if she was influenced in her actions and did what she did to avoid prejudicing her pension or pension rights.

Even if there were family rows and acrimonious happenings between Mrs. Ryan and Tony, I am satisfied they were not the true or real reason for the transfer which was brought about for the other reasons I have mentioned, even if this involved giving effect to Tony's alleged wish to have Moher.

For all these reasons I hold that the Defendant did not exert undue influence on Mrs. Ryan to force her into the deed of transfer of 20th July, 1973. This was not a voluntary deed or transaction of the kind usually understood by such description. It was one part of a transaction to give effect to the family arrangement and settlement as already described which was masterminded by Mrs. Ryan as is clear from her own evidence

whereby she acted with free will, decision, and discretion, and freely set the terms.

I also am satisfied that the transfer was not improvident. There was ample provision made for Mrs. Ryan in the transaction as a whole both in cash and rights which I need not repeat.

It is quite clear even on Mrs. Ryan's own evidence as already set out that she had independent advice from the solicitor of her choice and even if she herself laid down what she wanted, she nevertheless discussed what she was doing with Mr. O'Meara and received all necessary and relevant advice from him.

I am also satisfied that Mrs. Ryan at all relevant times had no mental or other infirmity - she was as clear as a bell.

The evidence shows that Mrs. Ryan with the concurrence of the beneficiaries wished to make a final family disposition of her late husband's estate including Moher. This was a family settlement to deal with the claims and rights of the interested parties by Mrs. Ryan as the head of the family and personal representative. As such and as part of the transaction as a whole the Deed of Transfer was not of its nature revocable, so that the inclusion of a revocation clause was not necessary or indeed appropriate and its absence is not a ground to set aside the deed of transfer

I am also satisfied that the deed of transfer was executed by Mrs. Ryan as a fully considered act and in the free exercise of her will and that she knew the effect of the document and what she was doing. There is only one other matter to which I would like to refer. Miss Mary Ryan in evidence stated there was no objection to Tony having the farm if only they could have peace and that this is what they wanted. Mrs. Ryan stated in evidence and agreed that her and the family's relations with Tony were all right when he got married but that the trouble started after (but not as a result of) when he got married and when Knockane was bought in 1977. Mrs. Tony Ryan gave uncontradicted evidence which would corroborate this position and that when she and Tony were married everything was happy friendly and good. This friendly environment and good relationships would have been scarcely consistent with the position alleged to have existed of near total warfare between the other members of the family (including Mrs. Ryan) and Tony covering the time up to and in July 1973, and for three years after the then execution of the deed of transfer, if as they must have been aggrieved and of the opinion that Tony had wrongfully got Moher under force and threat and misbehaviour. The existence of this friendly state of affairs in 1976 would therefore corroborate the view that the transfer of Moher to Tony in July 1973 was not obtained in this way and that the

troubles since then are due to other reasons which have prompted these proceedings.

I now come to deal with the plaintiff's claims for injunctions.

An injunction is a flexible remedy with virtually infinite scope.

In considering this part of the plaintiff's claim I am greatly influenced by Miss Mary Ryan's expressed wish for peace in the family and her appeal to me to do what I could to achieve this. May I say that nothing I can do or order can be properly effective without goodwill and effort on all sides and everyone involved, and also that peace involves a big measure of reconciliation and understanding of each others problems and some concession and compromise.

In order to decide what is best to do I think the first thing is to try and ascertain the problems which appear to have led to the present unhappy relationships.

I think there has been a clash of personalities arising from the family history.

When her husband died Mrs. Ryan was left with her young family to provide for and rear, and for that purpose to run and manage the farm single handed. To her great credit she has done this but the doing of it imposed on her the making of decisions and sole management of the farm over

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a long and uninterrupted period of time. She appears to be a lady of strong personality who as the years passed became accustomed to having her requirements and orders carried out without question or opposition.

In the circumstances which have arisen however when Tony grew up and remained on the farm and since he came into ownership of Moher since 1973, he too had his own ideas of management and what should be done and how the farm should be run as he believed right. These views and those of his mother did not always coincide and Mrs. Ryan found it difficult to adjust to the changed position and authority, or any surrender or acceptance of what she regarded as interference with the position she had enjoyed for so long. This led to differences and clashes of opinion and personality in which both Mrs. Ryan and Tony did not make sufficient allowance for the changed position of each others rights, legal and natural. In turn their relationship turned sour and led to disputes and arguments and the doing of things in excess which should not have happened. These became exacerbated when members of the family took sides - apparently all on their mother's side. This helped to create a feeling of annoyance and resentment in Tony. I have no doubt he did and said things in excess which he should not have done or said, and which in other circumstances he would not have done and which if continued would have to be stopped by court order as an interference.

with the rights of residence of Mrs. Ryan and other members of the family.

I feel however that much of what he did or said was provoked to a greater or lesser degree by a failure to accept his new position and to accord to him the recognition and rights which this carried with it.

In short both sides contributed to the unhappy events which brought about these proceedings for injunctions.

Other events also contributed to these happenings and compounded the position.

Much and agreed evidence was given that the trouble really began with the purchase of Knockane which caused a falling out and disputes between Liam and Tony which spread to the other members of the family. I am not called upon to investigate and decide the merits of this dispute, but as it seems to be a festering sore it should be healed and settled if peace is to reign.

Another factor which in my view has contributed greatly to breaches of the peace arose after Tony's marriage. At the time of this in 1976 friendly relations existed all around. These however have changed and Mrs. Tony Ryan gave undisputed and uncontradicted evidence that the Plaintiff Mrs. Ryan said she would not allow another woman in the house. This feeling to some degree can be understood due to Mrs. Ryan's long and undisputed

supremacy in Moher, and is a not infrequent occurrence in such circumstance. Although not expressed in Court such an attitude must inevitably create resentment and bitterness in Tony not to have his new wife accepted into the family or into the house of which he is the owner. He and his wife have a paramount right to live and be accepted in Moher of which he has been the owner since 1973, and to have accorded to them both acceptance of this position and non-interference with their right of peaceful enjoyment of what should be their home. Mrs. Tony Ryan also gave uncontradicted evidence of being refused admission by the ladies therein to what was her own house or home. These ladies had and have no right whatsoever to do this, but apart from rights such an attitude is bound to create in Tony an added feeling of resentment and anger and of being wronged which only adds fuel to an already smouldering condition of affairs. This was and would be an unwarranted abuse of the ladies' (Mrs. Ryan and any of her daughters) rights of residence, and Tony and his wife should be accorded their superior rights of ownership in their own home. To do so and with reciprocal recognition by him of the rights of enjoyment by the other members of the family to reside therein peacefully in the house would go a long way towards restored friendly relations.

Another major reason emerged in the evidence as a source of deep-

seated trouble giving rise to much dispute and continuing antagonism.

This relates to the parking difficulties in the yard and entrances to it and at the gate of the motorcars and other vehicles owned and used by the defendant Liam and other members of the family. The difficulties which the defendant says he encounters is restriction on his freedom to park and to turn his tractors. Others complain in turn that his vehicles obstruct theirs. He said his car had been parked in the one space for 20 years and

" all of a shot someone else takes it. He says that everyone should make way for the other but the trouble is the lack of space at any given time for all. Apparently there are four cars which belong to Breda, Mary, Liam, and the defendant's own car and also four tractors.

Efforts and adjournments during the hearing failed to find an amicable arrangement to solve this problem.

The matter therefore should fall and be governed by legal priorities if the parties cannot come to an agreement.

It seems to me axiomatic that the defendant as owner has priority over everyone else and should not be obstructed in the freedom of movement of his own vehicles in the yard or in coming into or leaving his own property or in his right to park his vehicles. This prevails over any of the others at all times and applies to the movements of his farm

vehicles and his right to priority parking in the yard.

Liam's right of residence does not include a right to the use of the yard or out-offices for his vehicles, be they motor cars or tractors. This matter appears to have been included in one agreement but not in another. It is agreed the latter is the true agreement. Even if it is arguable that a right of residence includes a right to bring a car on to the property and park it there, such right must be reasonably exercised and be subsidiary to the overriding right of Tony to use his own yard and entrances and not be obstructed in such use. I am of opinion that Liam's right of residence does not include the right to use the yard or outside premises to park or garage farm vehicles or his car.

Mrs. Ryan herself does not have or use a motor car and never did. Her right of residence does not extend to the car of any invitee of hers as a right superior to Tony's to which Mrs. Ryan or such other person must give way and not obstruct his user for his car or for farm vehicles.

Joan only has a right to return to the residence on holidays and not to reside in a permanent way as she appears to do at present and for some time past. As a matter of right therefor she is not entitled to bring in a car as attached to her right of residence except at best when on holidays and again even if a right of residence has an implied right to park a

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car in the yard it cannot be parked in a way or in a manner as to obstruct or impede Tony's right to park in a place of his choice or restrict or obstruct his freedom to move any of his vehicles, car, or tractor, or to enter or leave the yard.

The same applies to any and all members of the family with a right of residence.

In short therefore Tony has a right superior to any other member of the family to a parking place of his choice for his car and has also a prior right to have his farm vehicles in the yard and a right to their freedom of movement and not to be obstructed or prevented from turning therein or in entering or leaving. If this is recognised and applied much friction should be avoided.

These seem to me on the evidence to be the major causes of much of the antagonisms that exist. These ought to be recognised and eradicated if peace is to prevail.

In family matters and disputes like these unilateral injunctions frequently do more harm than good except when essential. Here Tony and his wife are now in fact living in temporary accommodation away from Moher until their new home is ready. They do not then intend to reside in Moher although fully entitled to do so. This should help. Tony however of

necessity has to use the yard for his vehicles and should be accommodated and accorded priority as indicated.

Having tried to identify the main sources of trouble with a view to their eradication I would hope for their recognition by all and put into practice with a view to a new beginning. Fundamentally this basically is a matter of human and family relations requiring co-operation goodwill and effort all round.

I think it best therefore to adjourn a decision on the injunctions sought to see how the parties get on for one year with liberty to both sides to apply to me in the meantime if necessary in the event of more trouble. If after one year all goes well, I will deal finally with the matter. Both sides therefore are to this extent under restraint and obligations.

I reserve the question of costs until the matter is finally adjudicated.

BRG
23/2/85