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Record No. E.C.B. 116
Northern Circuit

THE HIGH COURT
Circuit Appeal.

BETWEEN

ROBERT ALEXANDER MCGONIGLE

PLAINTIFF/APPELLANT

AND

WILLIAM J. BLACK

DEFENDANT/RESPONDENT

Judgment of Mr. Justice Barr delivered the 14th day of
November, 1988.

The relevant facts in this case are as follows: Edward McGonigle, deceased, (Mr. McGonigle) formerly of Flemingstown, Convooy, Co. Donegal, died intestate on 1st October, 1983. He lived for over twenty years with his uncle and aunt, Mr. and Mrs. James McClure, on a farm at Convooy then owned by Mr. McClure which is the subject matter of these proceedings. The McClures had no children. Mr. McGonigle helped in running the farm and seems to have been regarded by them as a son. Mr. McClure died in 1978 and left the farm by will to Mr. McGonigle subject to Mrs. McClure's life interest. After the death of his uncle, Mr. McGonigle ran the farm and continued to reside with his aunt. At that time the property comprised three holdings; the home farm of thirty six acres, which also included an old dwelling-house, and two separate

holdings not far away of nine and a half acres and six acres respectively. The entire comprised good quality land which at all material times had a value in excess of £1,000 per acre. Some time after Mr. McClure's death the dwelling-house on the home farm became derelict and thereafter Mr. McGonigle and his aunt vacated the premises and lived in a mobile home on the land. However, it appears that Mrs. McClure was in poor health and was transferred to hospital in or about 1979 where she remained until she died in 1981. After his aunt entered hospital there was no one to keep house for Mr. McGonigle and he was obliged to fend for himself. It is evident that he was unable to do so satisfactorily and the effective loss of his aunt caused him to develop a serious drink problem which became more acute as time went on.

I accept the evidence of Mr. Thomas Morrow, senior partner in David Wilson and Co., solicitors. He had a long-standing connection with Mr. and Mrs. McClure for whom he had acted as solicitor. He had also acted for Mr. McGonigle who he had known for many years. He first noticed that the latter was addicted to alcohol in 1980. Thereafter he often saw him in town and he personally observed that Mr. McGonigle's drink problem was becoming progressively worse in the following years. He was barred from local pubs. The primary reason was that when intoxicated he insisted on buying drinks for everyone because, it seems, he was lonely and was anxious to make friends.

The defendant is a married man aged thirty nine years who owns a farm of twenty six acres where he resides with his wife and three young children. That property is about half a mile from the McGonigle farm. The defendant knew the latter for about fourteen or fifteen years and for most of that time he

rented twenty acres of the McClure lands on con-acre. It appears that a friendship developed between them and in the latter years of Mr. McGonigle's life, after the departure of his aunt to hospital, they spent much time together. Mr. McGonigle often had breakfast in the Black household and sometimes other meals also.

Dr. Brian Lavelle of Convoy gave evidence that he had been the McClure family doctor and had also known Mr. McGonigle for many years. In April and May 1983, he treated him for a urinary tract infection. He did not return for further treatment as intended. Dr. Lavelle was aware that Mr. McGonigle had a drink problem but he was not consulted in that regard. Mr. McGonigle died on the 1st October, 1983.

The plaintiff is thirty years of age and was a nephew of Mr. McGonigle. He is married and lives about two and a half miles from his uncles's mobile home. I accept his evidence that each Sunday evening he brought Mr. McGonigle to see Mrs. McClure in hospital until she died in July, 1981. He described that his uncle came to his home occasionally for meals and that quite often he had drink taken on those occasions. He also confirmed that his uncle's alcoholism became more acute after Mrs. McClure's death. At that time he used to visit his nephew two or three times a week with occasional gaps of a fortnight or so. He described that for some years Mr. McGonigle had a urinary problem which caused him to wet himself involuntarily when he had drink taken and this happened more frequently from 1981 when his health seemed to deteriorate. The mobile home was very well kept in Mrs. McClure's time. Mr. McGonigle continued to maintain it reasonably well during her life but after her death it became, as the plaintiff described, "rougher and rougher". On his

death it was found to be in an appalling condition and it was evident that no one had attempted to clean the place for a long time.

Mr. McGonigle was not entitled to social welfare benefits because of the amount of land owned by him. It appears that from time to time he bought and sold a few cattle (though probably not in the last year of his life). He was dependent on that activity and on con-acre lettings for his livelihood. In his latter years his income from those sources was not sufficient to support his drinking habits, including his insistence on buying drink for others. He had an overdraft in the Bank of Ireland, Ballybofey, which amounted to £2,786.17 on 26th October, 1982 when the account was closed. The defendant also had an account in the same branch.

The first land transaction between Mr. McGonigle and the defendant was in or about December, 1980. Mr. Morrow gave evidence that in that month Mr. McGonigle called to his office and told him that he had agreed to sell his nine and a half acre holding to the defendant for £3,500. Mr. Morrow informed his client that in his view the price was very cheap, but the vendor insisted that he wished to go on with the sale. A contract dated 9th December, 1980 was duly drawn up and executed by the parties. £500 was paid to the vendor on signing the contract; £250 on completion and the balance of £2,750 was to be paid by three annual instalments, the last one being due in December, 1983.

Three months later, in March, 1981 Mr. Morrow received a message from V. P. McMullin and Son, solicitors for the defendant, to the effect that Mr. McGonigle had agreed to sell his six acre holding to the defendant for £3,000. Shortly afterwards the vendor came to see Mr. Morrow and he told him

that the sale was for far less than the true value of the land. He (Mr. Morrow) formed the opinion at that time that Mr. McGonigle was under the influence of the defendant. It was evident that he was not looking after himself properly and that his drink problem was getting worse. He did not accept Mr. Morrow's advice and insisted on proceeding with the sale of the six acres for £500 an acre - the going rate at that time being in the region of three times that amount.

On 24th June, 1982 Mr. McGonigle and the defendant came to see Mr. Morrow in his office. The former was quite unsteady and incoherent. The defendant spoke for him and said that Mr. McGonigle wished to give him the home farm of thirty six acres (i.e. all of his remaining lands) as a gift. Mr. McGonigle signified his consent but at the time was clearly unfit to transact business. Mr. Morrow told him to come back when he was sober. He did not do so.

The defendant's account of his business dealings with Mr. McGonigle was as follows: He said that the plaintiff asked him to buy the nine and a half acre plot because he was short of money. He had said that he wanted £3,000 and would give the defendant three years to pay for it. In the following year he again approached the defendant and asked him to buy the six acre plot and that he wanted £3,000 in his hand to buy cattle. This contract was duly completed and the entire purchase price was paid in one sum. The explanation given by the defendant as to the background to his purchase of the home farm from Mr. McGonigle in July, 1982 was that about two months earlier the latter had received a letter from the bank regarding repayment of his overdraft which was then in the region of £2,500. The defendant alleged that Mr. McGonigle asked him

would he buy the home farm on terms that he would pay off the bank and give the vendor £1,000 over and above the bank debt. The defendant stated that Mr. McGonigle was aware that the farm was worth about £40,000 but stated that he wished to give him the lands. At that point both men went to Mr. Morrow but it was not possible to transact business as Mr. McGonigle had too much drink taken at the time. I do not accept the defendant's evidence as to how Mr. McGonigle came to transfer the home farm to him and I also doubt his explanation of the other transactions. First of all, his version of the deal relating to the home farm does not accord with Mr. Morrow's account of the meeting which he had with Mr. McGonigle and the defendant on the 24th June, 1982. Mr. Morrow was not told anything about the debt due by Mr. McGonigle to the bank; that he was being pressed for payment or that the plaintiff had initiated the transaction by offering to sell the home farm to the defendant in return for clearance of the bank debt and a further payment of £1,000. On the contrary, the defendant's explanation at that time was simply that Mr. McGonigle wished to make a gift to him of the home farm. Secondly, the defendant went on to state in evidence that he was told by Mr. McGonigle that he would not go back to Mr. Morrow but instead had decided to consult James Boyle and Co., solicitors, in the matter of the home farm deal. He denied specifically that Messrs. McMullin and Son, his own solicitors, had advised him to bring Mr. McGonigle to Boyle and Company. This also is patently untrue. It is specifically pleaded in paragraph 11 of the Defence that acting upon the advice of his solicitors the defendant had brought Mr. McGonigle to the firm of James Boyle and Co. for independent legal advice. It also emerged from the evidence of

Mr. John Heverin, manager of the Bank of Ireland, Ballybofey, that Mr. McGonigle had obtained an overdraft of £2,500 on 8th March, 1982 for the purpose of buying stock and providing for living expenses. This loan was to be repaid out of the sale of stock in November, 1982. In fact the account was closed in the previous month when the outstanding balance at that time was discharged by the defendant. Mr. Heverin had no note of any letter having been sent to Mr. McGonigle earlier that year regarding the overdraft, nor was there any need for the bank to write to him because the loan was not due for repayment until the following November. I am satisfied that Mr. McGonigle did not receive any demand from the bank about repayment of his overdraft and that in the period May, June and July, 1982 he was unlikely to have been concerned about it.

Miss McCrory, solicitor, of James Boyle and Co., gave evidence which I also accept. She said that in or about the last week of June, 1982 Mr. McGonigle accompanied by the defendant came to her office. The former was obviously under the influence of drink and she sent them away without enquiring into their business. About three weeks later on 16th July they both returned to her office again. Mr. McGonigle was sober on this occasion. He explained that he wanted to transfer his home farm to the defendant. The latter was asked to leave the room and the remainder of Miss McCrory's interview with Mr. McGonigle took place in private. She ascertained that the title deeds of the property were being held in the Bank of Ireland, Ballybofey as security against an overdraft. She telephoned the bank and ascertained the acreage of the farm as Mr. McGonigle was not sure of the precise acreage. He told her that the purchase price of the land was to be £1,000 in cash and the purchaser was to clear the vendor's overdraft which

Miss McCrory had ascertained from the bank then amounted to the sum of £2,623. She advised Mr. McGonigle that the purchase price was not a realistic value and that it should be in the region of £30,000 to £35,000. She went on to advise that if he sold the farm on the open market he could expect to obtain about £1,000 per acre for it. Despite that advice Mr. McGonigle insisted that he wanted to transfer the farm to the defendant. He also told her that he had already received £500 from the purchaser as a deposit. Miss McCrory made a written attendance immediately after the interview. A transfer deed was made out. No consideration was shown because the debt to the bank was rising daily as interest mounted. She asked Mr. McGonigle to sign the transfer document and he did so. She then held it in trust until the consideration was paid in full. The transaction was completed on 19th November, 1982. She handed over the title deeds to Mr. Brian O'Mahony of V.P. McMullin and Son and in exchange received the sum of £300 which was purported to be the balance of the purchase price over and above the clearance of the overdraft and sums already paid by the purchaser to the vendor. She was not informed by Mr. McGonigle or anyone else that at the time of the transfer the defendant already owed £1,000 to the vendor on an earlier transaction; nor was she given any family history by her client or told that Mr. Morrow had acted for him and for the McClures for many years. The only observation Mr. McGonigle made to her by way of explanation for wishing to transfer his farm to the defendant was that the latter and his wife were the only people who had bothered about him. In fact this was not true as I am satisfied that the plaintiff and his wife had also taken an interest in Mr. McGonigle and had endeavoured to help him from the time when his aunt had gone into hospital.

It is well settled that equity will set aside a contract where one party thereto has exercised undue influence over the other party as a result of which the later has been induced to enter into an improvident transaction against his own interest. Certain relationships give rise to a presumption of undue influence and the onus is on the benefiting party to prove that none was exercised in fact. The catalogue of relationships which may give rise to that presumption is unlimited and in that regard I adopt with respect the following passage from the judgment of Lowry L.C.J. in R. (Proctor) .v. Hutton (No. 2) 1978 N.I. 139 at 147/8.

"The relationships which raise the presumption are left unlimited by definition, wide open for identification on the facts and in all the circumstances of each particular case as it arises it is a common but not necessary feature of the relationship that the person on whose part undue influence is alleged assumed a responsibility for advising the donor or even managing his property. There are certain relationships which are recognized as giving rise to the presumption, but there are also those which, upon a consideration of the particular facts, may raise the same presumption."

I am satisfied that for several years prior to his death Mr. McGonigle had a serious drink problem which became progressively worse as time went on and caused a deterioration in his health and general well-being. He was a bachelor and it is evident that he was particularly dependent on his aunt, Mrs. McClure, to provide a home for him and generally to look after him. It seems that, essentially, his problems date from the time when she went into hospital some two years before her

death and he was obliged for the first time to fend for himself. It is clear that this was too much for him and that he took refuge in alcohol. It is evident that he was a lonely man who was anxious to please and to be liked by his associates.

The defendant lived nearby Mr. McGonigle and had been taking land from him on con-acre for many years. I am satisfied that after Mrs. McClure's departure to hospital he built up a dominant relationship with Mr. McGonigle, who was then vulnerable to exploitation, through frequent contact and by providing him with some home comforts, though it seems that his help did not extend to giving any assistance to Mr. McGonigle in maintaining his dwelling in habitable condition. I am also satisfied that the nature of that relationship was such as to raise a presumption of undue influence exercised by the defendant over Mr. McGonigle in the matter of the transfer of the home farm thus casting an onus on the former to establish that that transaction was not brought about by any such improper influence. I have taken into account also that, although frequent drunkenness does not constitute absolute incapacity, it does lead a court to examine with particular care any transaction which may have been influenced by over-indulgence in alcohol even though the person so affected may have been sober at the time when the particular contract was made. I have no doubt that the defendant has failed to satisfy the onus upon him of establishing that his acquisition of Mr. McGonigle's family farm for a small fraction of its true value was not brought about by his undue influence over the vendor. The evidence of Miss McCrory falls far short of discharging that onus. It is also eminently likely that the defendant was instrumental in persuading Mr. McGonigle to leave his long-standing solicitor, Mr. Morrow, because he (the

defendant) was well aware that the former would be very loath indeed to allow his client to sell his last remaining asset for hardly more than a pittance.

Mr. McGonigle was not sober on the first occasion when brought to Miss McCrory by the defendant. I appreciate that he was sober at the time of the crucial second visit to James Boyle and Co., but, for whatever reason, he failed to instruct Miss McCrory sufficiently about his relationship with the defendant and other relevant matters to enable her to assess the situation adequately and fully advise him. In particular, she was not informed that the defendant already owed Mr. McGonigle £1,000 on an earlier transaction; that he was in the final stage of acquiring all of the defendant's lands at a gross undervalue and that before bringing him to Miss McCrory for so-called independent advice, Mr. McGonigle had been encouraged to leave the solicitor who had been advising him and his family for forty years. I have no doubt that Miss McCrory behaved with complete propriety in this matter, but if she had been appraised of all the salient information, including the fact that the lands comprised in the proposed transfer constituted Mr. McGonigle's last remaining asset, she might well have advised him differently and probably would have refused to accept his instructions.

I am satisfied that the purported acquisition by the defendant of Mr. McGonigle's home farm was for the vendor a grossly improvident transaction which was brought about by undue influence persistently exercised by the defendant over Mr. McGonigle who, because of a combination of bereavement, inability to cope, loneliness, alcoholism and ill-health, was vulnerable to manipulation and was so manipulated by the defendant to the vendor's obvious disadvantage. If follows,

therefore, that the plaintiff, as personal representative of Edward McGonigle, deceased, is entitled to the following relief:-

- (a) A Declaration that the defendant holds the property which is the subject-matter of this action in trust for the plaintiff; and
- (b) an order that the defendant shall vacate the said property and shall take all such steps as are necessary to enable the plaintiff to be registered as owner of the same in his capacity as administrator of the estate of the said deceased.
- (c) There shall be an enquiry in the Circuit Court as to damages limited to £15,000.
- (d) The plaintiff shall have liberty to make further application to the High Court in these proceedings, if necessary.

Approved.


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