APPROVED

THE HIGH COURT

[2024] IEHC 199

Record No. 2022/272CA

BETWEEN/

BRENDAN PAES

Respondent/Plaintiff

-AND-

EITHNE O'CONNOR

Appellant/Defendant

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 9th day of April 2024

INTRODUCTION

Preliminary

1. This application relates to the compromise on 29th November 2022 of an Equity Civil Bill (Record No. 2020/01672) Cork Circuit, *Brendan Paes (Plaintiff) v Eithne O'Connor (Defendant*) which had previously issued on 7th December 2020.

2. The compromise was recorded in the Order of the Circuit Court (His Honour Judge O'Donohoe) dated 29th November 2022.

3. Ms. Eithne O'Connor now purports to appeal that Order.

4. Ms. O'Connor was for a period prior to 29th November 2022 represented by the Legal Aid Board, 1a South Mall, Cork and pursuant to a motion dated the 6th May 2022, grounded on an Affidavit of Deirdre Kissane Solicitor dated in or around May 2022, Ms. O'Connor had indicated in an email dated 4th May 2022 (exhibited in Ms. Kissane's Affidavit) that she no longer wanted to be represented by the Legal Aid Board and an application was made for the Legal Aid Board to come off record. Therefore, Ms. O'Connor is a litigant in person and was so at the time of the compromise of the proceedings reflected in the Order of the Circuit Court on 29th November 2022.

5. This application was adjourned from 11th December 2023 to 22nd January 2024, arising from Ms. O'Connor's inability to attend the hearing in Dublin on that occasion due to illness.

6. Ms. Alison McCarthy BL appeared for Mr. Paes.

THE PROCEEDINGS

Equity Civil Bill (Record No. 2020/01672): The compromised proceedings

7. As mentioned, the proceedings which were compromised on 29th November 2022 (and incorporated in the Order of the Circuit Court of the same date) related to an Equity Civil Bill (Record No. 2020/01672) Cork Circuit, between *Brendan Paes (Plaintiff) v Eithne O'Connor (Defendant)* which was issued on 7th December 2020.

8. As addressed later in this judgment, those proceedings were *not* in fact heard by the Circuit Court, as the Court was informed when the case was called on 29th November 2022 that the parties had reached an agreement and settlement.

9. In summary, the Equity Civil Bill in Record No. 2020/01672 related to a property at 58 Glendower Court, Ballincollig, Cork Folio Number 31997F ("the property at 58 Glendower Court"), where the primary relief sought by the Plaintiff (Mr. Paes) was for the sale of the premises for the purpose of realising his share in the property pursuant to section 31(2)(c) of the Land and Conveyancing Law Reform Act 2009 or in the alternative, an order that the Defendant (Ms. O'Connor) transfer her interest in the property at 58 Glendower Court to Mr. Paes for such consideration as the Circuit Court considered appropriate.

10. By way of background, on or about 12th August 1997, Mr. Paes and Ms. O'Connor, who were at that time in a relationship, purchased the property at 58 Glendower Court. Mr. Paes and Ms. O'Connor have a son together.

11. Both Mr. Paes and Ms. O'Connor lived at the property for one year and jointly discharged the mortgage.

12. In or around 1998, Mr. Paes and Ms. O'Connor agreed with Ms. O'Connor's father that they would occupy some of a garden which belonged, and was adjacent to, her father's house at Willowbrook, Spur Hill, County Cork and they began building a house on this ground. It appears that due to a construction dispute, building on the land ceased. It is alleged by Mr. Paes that it was agreed as between Mr. Paes and Ms. O'Connor that her father would occupy, take over and pay the mortgage on the property at 58 Glendower Court in exchange for the property at Willowbrook, Spur Hill, County Cork, though no documentation was formally executed in this regard. It is alleged by Mr. Paes that he and Ms. O'Connor remained at the property in Spur Hill for approximately 8 years, until in or around 2011, when he moved back into the property at 58 Glendower Court. Mr. Paes alleges that when he moved back into the property at 58 Glendower Court, there were mortgage arrears in the amount of €12,000 and that he had to pay the arrears and principal sum totalling approximately €71,726.26 and that he had reduced the mortgage sum to approximately €28,000.

13. Mr. Paes alleges that since moving back into the property he has continued to discharge the mortgage alone. In brief, he claims that the sale of the premises would be more beneficial to both him and Ms. O'Connor rather than its physical partition.

THE SETTLEMENT & COURT ORDER

14. As mentioned earlier, in this case the Circuit Court was informed at the outset of the case being called on 29th November 2022 that the parties had reached an agreement and settlement. The Court was informed that Ms. O'Connor was a litigant in person. The application on behalf of Mr. Paes was that the settlement agreement be made "… *an order of the Court…as opposed to a consent*", and during the course of the 'hearing' the agreement was handed into court so that it could "*be made an order*."

15. Given that Ms. O'Connor was a litigant in person, the transcript of the Digital Audio Recording of the 'hearing' on 29th November 2022 shows that each paragraph of the settlement (as set out below) was initially read out to His Honour Judge O'Donohoe. It appears that during this process, and in the context of the terms of the settlement, Ms. O'Connor queried, in the event that there was a default in the settlement, the question of costs that would be incurred from the involvement of Mr. Walsh (Mr. Paes' solicitor) in the conveyancing of the sale, and His Honour Judge O'Donohoe sought to address Ms. O'Connor's observation on that part of the settlement and in doing so recommended Mr. Walsh. Again, given that Ms. O'Connor was a litigant in person, His Honour Judge O'Donohoe explained to her that the agreement reached reflected that it was done in the absence of legal advice and that the Court had investigated properly and comprehensively and had approved the settlement. Ms. O'Connor agreed with that. Earlier, His Honour Judge O'Donohoe had also inquired of Ms. O'Connor in relation to whether she felt competent to have reached a settlement and she confirmed that she did, whether she had had the opportunity of getting her own independent legal advice and she confirmed that she had and did not

wish to have independent legal advice. When asked, Ms. O'Connor confirmed that she understood and would not come back afterwards and say that she had not had proper legal advice.

16. The subsequent Order *inter alia* stated:

"*Record No. 2020/01672*

AN CHUIRT CHUARDA

(THE CIRCUIT COURT)

CORK CIRCUIT *CORK*

BEFORE JUDGE O' DONOHOE

THE 29th DAY OF NOVEMBER 2022

BETWEEN

BRENDAN PAES

PLAINTIFF

-AND-

EITHNE O'CONNOR

DEFENDANT

The Defendant having been duly served with the Equity Civil Bill herein and the same coming for hearing before the Court this day WHEREUPON and on reading the pleadings and documents filed herein and on hearing what was offered by Counsel for the Plaintiff and the Defendant In Person.

THE COURT DOTH ORDER

1. That the Defendant is to pay the Plaintiff the sum of €120,000.00 on or beofre [sic.] the 1st March 2023.

2. That this sum is to be paid into Norman Walsh Solicitor's client Account.

3. In Consideration for same, the Plaintiff will transfer his interest in the property at 58 Glendower Court, Ballincollig, Cork Folio number 31997F, being the subject matter of the within proceedings.

4. In the event of a default the property is to be put up for sale and the proceeds to be divided on a 60/40 basis.

5. Norman Walsh to have conveyancing of sale and Alan Browne to be appointed as Auctioneer.

6. The County Registrar to sign in default of Agreement on 10 days notice to either party.

7. Liberty to apply.

BY THE COURT

(SEAL)

NOMINATED SIGNATORY BY THE COMBINED OFFICE MANAGER".

Ms. O'Connor's contentions

17. Thereafter, at approximately 19:09 on 29th November 2022, the evening of the settlement agreement and order of the Court, Ms. O'Connor sent an e-mail to the County Registrar, His Honour Judge O'Donohoe and Mr. Walsh Solicitor, referring to the proceedings which had been listed earlier that day, and to the fact that the parties

had reached "… *an amicable agreement that both parties were eventually content to agree with*", but pointing out that there were two or three points that she had reluctantly consented to as she stated she felt pressurised and under duress because of her concern that there could be a court sale of her property that day.

18. Both of Ms. O'Connor's stated concerns arose in the context of a possible *default scenario i.e.*, where monies had not been received and a transfer had not occurred and in those circumstances the settlement provided for the property at 58 Glendower Court to be put up for sale and the proceeds to be divided on a 60/40 basis *i.e.*, 60% to Ms. O'Connor and 40% to Mr. Paes.

19. First, Ms. O'Connor stated that she did not agree, in the context of a default scenario, to either "*Norman Walsh Solicitor having the conveyancing of the sale*" or that "… *he would use his Auctioneer to sell*" Ms. O'Connor's home, *i.e.*, the property at 58 Glendower Court. Ms. O'Connor stated in this e-mail that she wished to use her own solicitor and her own auctioneer stating *inter alia* that "… *its simply just a matter of my needing to look out for my own best interest and safety regarding my home and financial and legal interests and also as Mr. Walsh is looking out for his client my ex partner Mr. Paes I would need my own Auctioneer and Solicitor to do the same for me independently of Mr. Paes' team*."

20. Second, Ms. O'Connor stated that she could not consent, again in the circumstances of a default scenario, to the monies from the sale of the house being paid into Mr. Walsh's practice account and again stated her preference, in such an eventuality, for the proceeds of a sale to be paid into her solicitor's account.

21. Essentially, Ms. O'Connor wished for these changes to be effected before the final Order of the Court was made (perfected), and if it was made, for the Order to be amended to reflect these matters and she inquired as to whether she would have to apply to the Court or the County Registrar in relation to such amendments.

22. Ms. O'Connor's e-mail (dated 29th November 2022) was replied to in an e-mail dated 30th November 2022 by an official of the Cork Court Office, in which it was confirmed that Ms. O'Connor's e-mail (of 29th November 2022) had been brought to the attention of His Honour Judge O'Donohoe who had requested that the Cork Court Office Official reply to Ms. O'Connor and state that the Order made by the Court stood and that Mr Walsh as the representative of the other party (Mr. Paes) be notified, and he was duly copied in on the email dated 30th November 2022.

23. Ms. O'Connor then replied to the Cork Court Office Official by way of a further detailed e-mail on 1st December 2022, repeating and adding to the contents of her previous e-mail and again seeking what was in effect an amendment to the default provisions of the settlement and in particular that provision in the agreement which provided that Mr. Walsh, Solicitor, would have the conveyancing of the sale *inter alia* stating that, in the circumstances of a default, she did not want her share of the monies from the proceeds of a sale, to be paid in to Mr. Walsh's Solicitor's Client Account.

24. At the hearing before me, Ms. O'Connor's written and oral submissions alleged many very serious matters which went beyond the issues identified in her emails on the day of the settlement agreement and its immediate aftermath. I should add that while it is

perfectly understandable that a person in Ms. O'Connor's position, who is not familiar with litigation, will experience a level of stress, and insofar as Ms. O'Connor suggests otherwise, Mr. Paes' legal representatives have acted at all times in a professional manner in this application.

25. In summary, therefore, Ms. O'Connor raised *inter alia* the following alleged matters: Ms. O'Connor submitted that she had been a family carer for the previous 20 years and had looked after their son; Ms. O'Connor said she shared a family interest in land and property and, for example, had bought a separate house in her own name in her early twenties and had later sold that house; Ms. O'Connor stated that she had paid £15,000 of the £68,000 purchase price for the property at 58 Glendower Court which, it was stated, had a valuation in 2022 of €315,000. She stated that she had spent approximately €25-€30,000 on the property at Glendower Court; she alleges that Mr. Paes took no interest in the property at 58 Glendower Court; she alleged that there were two (or three) charges registered in relation to the property at 58 Glendower Court which she believed comprised a €10,000 Credit Union loan which she alleges Mr. Paes persuaded her to take out, money in relation to the piling of foundations for the house that she was building in the garden adjacent to her father's property at Spur Hill (which property was also the subject matter of litigation and in relation to which the building had ceased), and she believed there was another charge in relation to lawyers/solicitor's fees; Ms. O'Connor alleged that their son was contributing to repaying the mortgage.

26. Ms. O'Connor states that she was devastated when she received the Equity Civil Bill; Ms. O'Connor alleged that she had contributed to the funding of Mr. Paes' lifestyle,

including a return trip to India and one trip to Goa. She stated that she paid for their trip to Thailand and India for 3 months and gave Mr. Paes £4,000 in traveller's cheques and that she paid for flights and hotels, *etc.*; she alleged that she contributed to Mr. Paes' mother's hospital bills; Ms O'Connor alleged that Mr. Paes had odd jobs and that Ms. O'Connor and her father had helped support him; Ms. O'Connor made further very serious allegations concerning Mr. Paes which are not relevant to the application before me.

29th November 2022

27. On the day of the case being listed before the Circuit Court on 29th November 2022, Ms. O'Connor alleges that there was no discussion with her about an order on consent; in dealing with the legal proceedings and in the negotiations Ms. O'Connor alleges that she felt under undue pressure, intimidated, overwhelmed, coerced and in an inferior position; Ms. O'Connor states that she signed the agreement but was not furnished with a copy of what she had signed and referred to mistakes in the DAR. She alleged that the settlement agreement was coerced and arose from undue pressure and states that she felt totally exploited; Ms. O'Connor stated that she wished to negotiate with Mr. Paes and was concerned that the Circuit Court would direct the sale of the property at 58 Glendower Court if she did not agree to the compromise and she felt that everything was rushed; Ms. O'Connor states that she did not think it was appropriate when the terms of the settlement were read out that the Circuit Court would recommend Mr. Walsh in addressing her query; She submitted that she did not have any other choice but to agree; however, she contended that it was not a fair compromise and in this regard emphasised that Mr. Paes had not factored into the payment in the compromise and settlement, the alleged agreement between Mr. Paes

and Ms. O'Connor that if Mr. Paes moved back into the property at 58 Glendower Court that he (Mr. Paes) would pay the mortgage for both of them (Ms. O'Connor and Mr. Paes) and that would cover the lost rent that she would have been receiving and it would also guarantee the house for their son; Ms. O'Connor submitted that she mistakenly thought she had €100,000 to negotiate with, when in fact she had €90,000; She stated that Mr. Paes' legal representatives had sought €120,000 and she thought that she could come up with the other €20,000 from the Building Society and in the hearing before me submitted that she could not do so; Ms. O'Connor indicated that she would be prepared to settle the case for €90,000 which she thought Mr. Paes would be doing well to accept and queried whether Mr. Paes would accept €90,000; Ms. O'Connor wanted the Order of the Circuit Court set aside because of what she alleges was the duress and undue influence she alleges that she experienced and by doing so she believed that further negotiations could take place.

Mr. Paes' position

28. Mr. Paes' position was outlined by Ms. McCarthy BL and can be summarised as follows.

29. Ms. O'Connor had been represented by the Legal Aid Board but had dispensed with their services prior to 29th November 2022. The week prior to 29th November 2022, Ms. O'Connor had indicated that she wanted to keep her home and inquired into how much Mr. Paes willing to be bought out for.

30. While the value of the property at 58 Glendower Court was estimated at approximately €310,000, counsel stated that Mr. Paes was prepared to accept less to bring matters to finality.

31. On 29th November 2022 the settlement terms were read out to His Honour Judge O'Donohoe on the basis that Ms. O'Connor was a lay litigant. Ms. McCarthy BL makes the point that, strictly speaking, it was not necessary to do this and that this compromise was not analogous to family law proceedings and it was not necessary, for example, that evidence had to be given in relation to the compromise. She submits that in the normal course, such a compromise would be reached and signed and would be struck out with an Order from the Court but that this was not done precisely in this manner because Ms. O'Connor was representing herself.

32. Ms. McCarthy BL rejected in the strongest possible terms the allegations made by Ms. O'Conner as to the nature of the negotiations and the conduct of both herself, Mr. Walsh Solicitor and His Honour Judge O'Donohoe and in addition rejected Ms. O'Connor's wider allegations, including those directed at Mr. Paes, and further submitted that they were not on affidavit, were not correct and were not relevant.

33. Ms. McCarthy BL referred to and relied on the following: (i) the transcript of the Circuit Court before His Honour Judge O'Donohoe on 29th November 2022; (ii) *Charalambous v Nagle* [2011] IESC 11; (iii) *Belville Holdings Ltd (in Receivership and in Liquidation) v The Revenue Commissioners & Ors* [1994] 1 I.L.R.M 29; and (iv) Foskett, *The Law & Practice of Compromise* (Seventh Edition, extract at paragraph 6-25, p. 123).

34. Ms. McCarthy BL submitted that this was not a *de novo* re-hearing because no actual hearing had taken place in the Circuit Court. It was a purported appeal from an order that was made in relation to a settlement that had been agreed. Ms. McCarthy BL submitted that a ruling in such circumstances could not be appealed. She submitted that clear consent and agreement had been given by Ms. O'Connor and in the circumstances of this case, final orders could not be appealed or re-litigated.

ASSESSMENT & DECISION

35. For the following reasons, I am of the view that Ms. O'Connor's application should be refused.

36. Also, for the reasons set out below, I believe there is force in the submission that this application and purported appeal is misconceived. In summary, (as just outlined) Ms. McCarthy BL submitted that the application before me was not a *de novo re-hearing* because *no hearing* had taken place and no evidence had been adduced in the Circuit Court. While I set out the reasons why this application is being refused on this preliminary ground (effectively that the application is misconceived as contended for on behalf of the Plaintiff) similar issues to the point raised by Ms. McCarthy BL in terms of the exercise of the High Court's statutory appellate jurisdiction on a Circuit Court appeal pursuant to the provisions of Courts of Justice Act 1936 (as applied by s. 48(3) of the Courts (Supplemental Provisions) Act 1961), as opposed to dealing with a matter at first instance, have been addressed in detail by the Court of Appeal (Finlay-Geoghegan J.) in *Kelly v National University of Ireland Dublin aka UCD*

[2017] IECA 161; [2017] 3 I.R. 237, the High Court (Barrett J.) in *Permanent TSB plc formerly Irish Life and permanent plc v O'Connor* [2018] IEHC 339 and Power J., sitting as High Court judge, in *Mars Capital Ireland DAC v Hunter* [2020] IEHC 192. Arguments as to their application, if any, to a situation where a settlement/compromise is reflected in the Order of the Circuit Court which is then sought to be the subject of a purported appeal must await a different case where the matter is fully explored.

37. In this regard, the proceedings in *Equity Civil Bill Record No. 2020/01672* were compromised and settled between the parties. There was no hearing before the Circuit Court and therefore there could be no rehearing of the action as per the provisions of the Courts of Justice Act 1936, section 37 (as applied by s. 48(3) of the Courts (Supplemental Provisions) Act 1961.

38. The negotiation, settlement, presentation of the settlement to the Circuit Court and engagement by the Court with the parties, particularly Ms. O'Connor, was very much informed by the fact that Ms. O'Connor was a litigant in person. Consistent with this matter not being a re-hearing, both parties addressed the application before me on the *preliminary issue* concerning the compromise or settlement which had been reached.

39. As just mentioned, the process of the *presentation* of the settlement agreement to the Circuit Court and that court's engagement was largely informed by the fact that Ms. O'Connor was a litigant in person who had reached a settlement. Notwithstanding that, in this application Ms. O'Connor essentially seeks to set aside the settlement agreement on grounds of alleged duress but attempts to do so via the prism of a

purported appeal from the Order of the Circuit Court dated 29th November 2022 which incorporated the settlement agreement. The fact that the settlement was made an order of the Circuit Court, however, was more to do with the giving effect to, or the manner of the *enforcement* of the settlement agreement. The enforcement of the settlement agreement, however, is not a matter which I have to address save for the observation that the terms of the settlement agreement and order provided for "*liberty to apply*".

40. The inclusion of *liberty to apply* allows either party to apply to go back to the Circuit Court and seek to clarify the extent or application of the terms of the settlement agreement, which in this case, happens to be set out in the Order made by His Honour Judge O'Donohoe on 29th November 2022. That remains the case today. The parties can seek to invoke the "*liberty to apply*" if they so choose but that is a matter entirely for them. It does not, however, entitle either of the parties to re-litigate matters or re-commence the prosecution of the proceedings. In order for that to happen, which does *not* apply in this case, an agreement would usually incorporate the term "*liberty to re-enter*": see generally the discussion of the matter in the judgment of the Court of Appeal in *Solicitors Mutual Defence Fund Limited v Costigan & Others* [2021] IECA 20 (Faherty J, Collins J., and Binchy J.; judgment was delivered by Binchy J.).

41. Further, in *O'Sullivan v Weisz* [2005] IEHC 74 Finnegan P. held (at page 5 of his judgment) that notwithstanding the observations of Phillimore LJ in the Court of Appeal in England and Wales in *Binder v Alachouzos* [1972] 2 All ER 189 "*a judgment given or an order made by consent may in a fresh action brought for that purpose be set aside on any ground which would invalidate a compromise not*

contained in a judgment or order: Weilding v Sanderson (1897) 2 CH 534, Hickman v Berens (1895) 2 CH 638. Thus a compromise may be set aside on the ground that it was illegal as against public policy, or obtained by fraud, or misrepresentation, or non disclosure, or was concluded under a mutual mistake of fact. Specifically a compromise can be set aside on the ground that it was obtained by duress: Cumming v Ince (1847) 11 Q.B. 112. Thus the compromise and the agreement sought to be set aside by the Plaintiff in these proceedings can be set aside on the grounds of duress. Duress can encompass economic duress. A compromise gains no additional status by being embodied [sic.] in an order or by being made a Rule of Court".

42. As stated, in seeking to impeach the settlement agreement/consent reached between the parties on 29th November 2022, Ms. O'Connor essentially seeks to set aside the settlement agreement on alleged grounds of duress but attempts to do so via the prism of a purported appeal from the Order of the Circuit Court dated 29th November 2022 which incorporated the settlement into a court order.

43. The attempt to do so, however, falls foul of the decision of the Supreme Court in *Charalambous v Nagle* [2011] IESC 11.

44. In that case an order had been made by the Circuit Court (His Honour Judge Terence O'Sullivan) on consent that Ms. Nagle recover possession of the premises, the Avoca Inn, from Mr. Charalambous. Both parties were legally represented before the Circuit Court. The Order cites that it was made "*on consent*". Mr. Charalambous appealed the Order and the High Court (Edwards J.) refused the appeal on the grounds that it was an order made on consent, that no appeal lay, and ordered that: (a) the appeal do stand

refused; (b) the order of the Circuit Court was affirmed; and (c) the respondent do recover against the appellant the costs of the appeal. Separate intoxicating liquor licence proceedings and Circuit Court and High Court proceedings in relation to the matters also issued. When the matter came before the Supreme Court, Denham J. (as she then was) observed at paragraph 27 of her judgment that the kernel of the case related to a consent order of the Circuit Court and in that context further stated at paragraphs 28 and 29 (and in the context of the order from His Honour Judge O'Sullivan) that "*(28) [t]here were no grounds raised upon which to set aside the consent order on a basis recognised by law. The appellant has brought several sets of proceedings subsequent to the order of the 5th February, 2008. However, there has been no claim of fraud. (29) These were final orders. Final orders are final and conclusive and may not be relitigated except in circumstances such as indicated in Belville Holdings v Revenue Commissioners [1994] 1 ILRM 29.*"

45. The decision in *Belville Holdings Ltd. v Revenue Commissioners* is a reference to the authority which provides the Court's jurisdiction to alter or amend an Order once it has been perfected in circumstances where (a) there has been an accidental slip in the order as drawn up *i.e.* the slip rule, and (b) when the Court itself finds that the order does not correctly state what the Court actually decided and intended: see *Belville Holdings Ltd. v Revenue Commissioners* [1994] I.L.R.M. 29; *G McG v D W (No. 2)* [2000] 1 I.L.R.M. 121; *Ainsworth v Wilding* [1896] 1 Ch. 673; *In re Swire* (1885) 30 Ch. D 239 (CA). None of these circumstances apply in this case.

46. In her judgment in *Charalambous v Nagle* [2011] IESC 11, Macken J. stated as follows at paragraphs 28-30:

"*28. As to the contention that this was a settlement made without the knowledge of the appellant, the learned High Court judge had before him ample evidence upon which to conclude both that the appellant knew the content of the settlement and understood it; that the solicitor acting on behalf of the appellant had ostensible authority to conclude the settlement; and that his instructions were not withdrawn. I am satisfied, therefore, the learned High Court judge had ample material before him upon which to conclude the settlement was a consent settlement, and that the Order of the Circuit Court (O'Sullivan, J.) was a valid Consent Order, including the affidavit evidence of the appellant himself sworn a short time after the Circuit Court Order was made.. [sic.] That being so, the next matter to be considered and applied is the law relating to final orders, including Consent Orders, and whether the content of proceedings leading to the making of such an Order can be relitigated. The law relating to final orders is helpfully found in the case of Belville Holdings v Revenue Commissioners [1994] 1 I.L.R.M. 29, as referred to in McG(G) v W(D) IESC 31st March, 2000, in which the fundamental principle relating to any change in a final order is set out in the judgment of Denham, J., invoking English case law to the following effect:*

> *"The position and principles appear, however, to be accurately stated in the judgment of Romer J. in*

Ainsworth v. Wilding [1896] I Ch 673, where, at p.677 he stated as follows:

> *'So far as I am aware, the only cases in which the court can interfere after the passing and entering of the judgment are these:*
>
> *(1) Where there has been an accidental slip in the judgment as drawn up, in which cases the court has power to rectify it under 0.28, r. 11;*
>
> *(2) When the court itself finds that the judgment as drawn up does not correctly state what the court actually decided and intended.'*

Having referred to the decision of the Court of Appeal in In re Swire 30 ChD 239, Romer J quoted from the judgments in that case as follows at p.678:

> *'Cotton LJ says: "It is only in special circumstances that the court will interfere with an order which has been passed and entered, except in cases of a mere slip or verbal inaccuracy, yet in my opinion the court has jurisdiction over its own records, and if it finds that the order as passed and entered contains an adjudication upon what which the court in fact has never adjudicated upon, then, in my opinion, it has jurisdiction, which it will in a proper case exercise, to correct its record, that it may be in accordance with the order really pronounced."*

Lindley LJ says: 'If it is once made out that the order, whether passed and entered or not, does not express the order actually made, the court has ample jurisdiction to set that right, whether it arises from a clerical slip or not.'

And Bowen LJ says: "An order, as it seems to me, even when passed and entered, may be amended by the courts so as to carry out the intention and express the meaning of the court at the time when the order was made, provided the amendment be made without injustice or on terms which preclude injustice."

I am satisfied that these expressions of opinion validly represent what the true common law principle is concerning this question. I would emphasise, however, that it is only in special or unusual circumstances that an amendment of an order passed and perfected, where the order is of a final nature, should be made."

29. Final orders are just that – final and conclusive. They may not be altered except in circumstances such as indicated in case law. The circumstances permit alterations which are intended accurately to reflect what was actually decided, and which the order sought to be amended ought to have said, had it been drawn correctly. There were no proper grounds advanced, in the present case, to set aside the

Consent Order on a basis recognised by law. There was and is no claim of fraud pleaded in the present proceedings, although Ms. Farrell in answer to questions from the bench on this point appeared to demur slightly and to reserve her position. That is not an acceptable approach, in my view, since if it is intended to plead fraud, the pleadings must recite the facts which give rise to the allegation in terms which make it absolutely clear that such a plea is being pursued. Such a plea is not disclosed in this case on the pleadings.

30. Having regard to the foregoing, I am satisfied that the learned High Court judge could, both on the law opened to him and on the material evidence before him, properly conclude that the Circuit Court Order was made with the consent of the appellant".

47. The attempt by Ms. O'Connor to challenge the settlement reached via a purported appeal from the Circuit Court is contrary to the decision of the Supreme Court in *Charalambous v Nagle.*

48. Here, for example, the Circuit Court was informed at the outset of the case being called on 29th November 2022 that the parties had reached an agreement and settlement of the proceedings in Equity Civil Bill (Record No. 2020/01672) Cork Circuit, *Brendan Paes (Plaintiff) v Eithne O'Connor (Defendant)* issued on 7th December 2020.

49. Given that Ms. O'Connor was a litigant in person, each paragraph of the settlement was initially read out to His Honour Judge O'Donohoe who in turn engaged with Ms. O'Connor, because she was a litigant in person, as to those terms.

50. In summary, the settlement provided that a sum in the amount of €120,000 was to be paid by Ms. O'Connor to Mr. Paes on or before 1st March 2023, with payment made to Mr. Walsh's Solicitor's Client Account and in consideration Mr. Paes was to transfer his interest in the property at 58 Glendower Court. The settlement provided that in the event of a default, the property at 58 Glendower Court was to be put up for sale and the proceeds were to be divided on a 60/40 basis (60% to Ms. O'Connor; 40% to Mr. Paes) and Mr. Norman Walsh, Solicitor, was to have the conveyancing of the sale (and Alan Browne was to be appointed as Auctioneer). The settlement further provided that the County Registrar was to sign in default of agreement on 10 days' notice to either party and "*liberty to apply*" was given.

51. During the process of outlining those terms of settlement, Ms. O'Connor queried, in the event that there was a default in the settlement, the question of costs that would be incurred from Mr. Walsh's involvement in the conveyancing of the sale. His Honour Judge O'Donohoe sought to address Ms. O'Connor's observation on that part of the settlement and in doing so recommended Mr. Walsh. This was agreed to by Ms. O'Connor, who indicated that she was happy to sign the terms during the engagement with the court. When the terms of settlement were read out to the Circuit Court, having regard to the fact that Ms. O'Connor was a litigant in person, His Honour Judge O'Donohoe explained to her that the agreement reached reflected that it was

done in the absence of legal advice and that the Court had investigated properly and approved of the settlement. Ms. O'Connor agreed with that.

52. However, in the evening of the same day that the proceedings had been compromised and mentioned to His Honour Judge O'Donohoe (and also a few days later), Ms. O'Connor sought to have the Order of the Court amended in two respects in circumstances where a default might arise: first, she did not want Mr. Walsh, Solicitor, to have the conveyancing of the sale of the property at 58 Glendower Court; second, she did not want her share of the monies from the proceeds of a sale, to be paid in to Mr. Walsh's Solicitor's Client Account. These matters were, however, the subject of the settlement agreement.

53. The parties to this Equity Civil Bill compromised it by agreement and informed the Circuit Court of this fact when the case was called on the morning of 29 November 2022. Whilst it was not strictly necessary to do so, given that Ms. O'Connor was a litigant in person, the terms of the settlement were read to the Court, approved and ruled by the Court, signed during this 'hearing', handed into the Court and made an Order of the Court. In this application, Ms. O'Connor is effectively seeking to revisit the settlement agreement of 29th November 2022 in order to re-negotiate same and to do so via a purported appeal of the Order of the Circuit Court which had incorporated the settlement, presumably for reasons of enforcement.

54. Similarly, in *Flynn v Desmond* [2015] IECA 34 the Court of Appeal (Peart J., Hogan J., and Mahon J.; judgment delivered by Mahon J.) addressed the circumstances where the High Court (Birmingham J., as he then was) had made an order that

proceedings had been compromised by an agreement made between the Plaintiff and the Defendant, wherein it was agreed that a sum of money was to be paid to the Plaintiff in settlement of his personal injury claim. The Plaintiff, however, then appealed the High Court Order and the Court of Appeal (Mahon J.) observed as follows at paragraphs 17 to 19 of the judgment:

> "*17. A litigant is entitled to process, manage and conclude his litigation in the absence of legal advice or representation, and many choose to do so. There is, of course, a very considerable public interest in upholding the finality of settlements and courts have been traditionally wary of permitting any litigant to undo any such settlement.*
>
> *18. It is true, of course, that the plaintiff is a litigant in person. But this in itself cannot be a reason for allowing the settlement to be undone, for if it were so, it would mean, in effect, that no settlement with a litigant in person would ever be final. It must also be recalled, moreover, that the plaintiff accepts that he was advised that he should seek independent advice prior to concluding the settlement.*
>
> *19. A court will usually go to considerable lengths to assist lay litigants and will allow considerable latitude to them in stating their case. In doing so, however, a party with legal representation should not be unfairly penalised because his opponent does not have legal representation: see RB v AS [2002] 2 I.R. 428. In McGill v Ulster Independent Clinic and Others [2010] NICA33 Girvan L.J. commented as follows:*

> *"While courts are conscious of the difficulties faced by a personal litigant representing herself and will strive to enable that person to present her case as well as they can, the dictates of objective fairness and justice preclude the court from in any way distorting the rules or the requirements of due process because one party is unrepresented*".

CONCLUSION

55. It is a matter for the parties how they intend to give effect to the settlement agreed between them, including the provisions providing for "*liberty to apply*". Insofar as this application is concerned, I shall allow the preliminary objection made on behalf of the Plaintiff and refuse the Defendant's application.

PROPOSED ORDER

56. Accordingly, I shall make an order refusing the Defendant's application. I shall put the matter in for mention before me at 10:45 on Friday 26th April 2024 to address any ancillary or consequential matters.