

Neutral Citation No: [2021] NIFam 40	Ref: McF11620
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<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	Delivered: 30/09/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

Between:

A SON

Applicant/Appellant

-v-

A DAUGHTER

Objector/Respondent

IN THE MATTER OF A MOTHER

Lorraine Keown of Cleaver Fulton Rankin Solicitors for the appellant
Richard Shields BL (instructed by Worthingtons Solicitors) for respondent

McFARLAND J

[1] The mother (“the Donor”) executed an enduring power of attorney (“EPA”) on 8 September 2018 appointing her son (“the appellant”) as her attorney. On 26 May 2021 the appellant applied for registration of the EPA relying on the opinion of a consultant psychiatrist as to the Donor’s capacity. An objection to the registration was lodged by the Donor’s daughter (“the daughter”). Further objections on similar grounds were received from three of the daughter’s children.

[2] By order of 3 August 2021 Master Wells registered the EPA.

[3] The daughter sent an email to Master Wells on 12 August 2021 which resulted in Master Wells reviewing the matter and making certain directions on 17 August 2021. Included in that direction was an order that the registered EPA should not be used pending a hearing. On 24 August 2021 the appellant appealed against the direction of the Master.

[4] The main ground of appeal is that the email of 12 August 2021 should not have been considered by Master Wells as it was not a formal notice of appeal and was, in any event, out of time. The appellant asserts that Master Wells erroneously prohibited the use of the registered EPA and then issued directions for a hearing by which she would be conducting an appeal of her own order.

[5] The relevant legislative provisions are contained in the Enduring Power of Attorney (NI) Order 1987 (“the 1987 Order”) and Order 109A of the Rules of the Court of Judicature (“Order 109A”).

[6] I do not consider that Master Wells has in any way sought to revoke her original order. On receipt of the email of 12 August 2021 she decided that further enquiry should be made relating to the EPA and its registration. She then imposed an embargo on the use of the EPA as a precaution against dissipation of the Donor’s assets pending determination of the issues raised in the email.

[7] The appellant argues that this was beyond the Master’s power. Having made the order, the appellant argues, there is nothing more the Master can do. The order stands until someone appeals it.

[8] This argument is not overburdened with merit. One of the functions of the Master in the Office of Care and Protection is to protect the interests of people who are unable to manage their own affairs. That is done by a combination of quasi-judicial and quasi-administrative functions. The Master performs an inquisitorial role in this regard, and her functions are not restrained in any way by adversarial proceedings.

[9] Order 109A Rule 5(2) states that any objection received after registration of an EPA shall be treated as an application to cancel the registration.

[10] Article 10 of the 1987 Order sets out the powers and duties of the court after registration. They include at Article 10(2)(b)(i) a power to give directions with respect to the management or disposal by the attorney of the property and affairs of the donor. Article 10(4) sets out the grounds by which a registration can be cancelled. They include when the court determines that a donor is and is likely to remain mentally capable (sub clause (c)) and the unsuitability of the donor (sub clause (g)).

[11] Order 109A Rule 6(7) permits the court when determining any question under the 1987 Order to act on its own motion and make and give directions in the course of an application.

[12] The email of 12 August 2021 objected to the registration and therefore the Master was obliged to treat it as an application to cancel the registration. The appellant’s assertion that it constituted an appeal and therefore had to be in time, in the correct form and made to a High Court judge is incorrect. It triggered an

application to cancel the registration which the Master was perfectly entitled to deal with. Should that objection merely repeat earlier objections or be vexatious or frivolous, then the Master would have been perfectly entitled to dismiss it summarily without hearing. Should it raise valid issues for further consideration and the Master felt that further enquiry is required, then the Master is entitled to direct those enquiries and convene a hearing to determine the matter.

[13] Order 109A Rule 6(7) gives the Master a wide discretion to deal with any application including an application to cancel registration. Much will depend on the nature of the objection, the assessment of the issues raised and the appropriateness or otherwise of any steps to be taken to protect the estate of the Donor.

[14] A High Court judge will be very slow to interfere when a Master is exercising this function unless the Master acts outside her powers or makes directions which could reasonably be regarded as unnecessary or disproportionate. The Master has expertise in dealing with this type of issue and is very well placed to act in an appropriate fashion.

[15] The email of 12 August 2021 did repeat certain of the earlier objections but also included new information. The Master was not only entitled to take this information into account, but in exercise of her duty to protect the estate of an elderly lady, was required to take such steps that she considered necessary.

[16] The Master on consideration of the email made the following directions -

- a) Ordered the appellant not to use the registered EPA pending a hearing;
- b) Initiated a tender process to obtain independent representation for the Donor;
- c) Sought a social circumstances report from the local Health Trust;

[17] The directions of the Master were entirely within her powers and on any objective analysis could be regarded as necessary and proportionate.

[18] I dismiss this appeal. The matter will revert to the Master to enable her to continue her investigations and to convene a hearing to resolve any outstanding issues.

[19] There is little merit in this appeal. It has delayed unnecessarily the management of the Donor's affairs and has resulted in both parties incurring legal costs. Costs do normally follow the event, but exercising my discretion I will direct that the costs of both parties shall be paid for out of the Donor's estate. I will cap the costs to a figure of £500 plus VAT. Anything in excess of this sum must be dealt with on a solicitor-client basis. This order is contingent on the Donor being incapable of managing her affairs. Should the Master determine that the Donor is capable of managing her affairs, these entire proceedings will have been unnecessary

and I order that the appellant be responsible for his own costs and that he pay the costs of the respondent, fixed, again, at £500 plus VAT.