

Neutral Citation No: [2018] NIMaster 12

Ref: 2018NIMaster12

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **8/11/18**

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

HJC

Petitioner

and

MCC

Respondent

(Valuation Hearing)

MASTER SWEENEY

[1] The parties are invited to consider this judgment and unless they inform the Matrimonial Office in writing within two weeks as to whether there is any reason why the judgment should not be published on the Court Service website, or whether further anonymization is required before publication, then the judgment will be published in its present form.

[2] This case came before me for a Valuation Hearing on Friday 26th October 2018 and was adjourned for judgment today. It has been listed for Financial Dispute Resolution Hearing on 29th November 2018 at 11.00 a.m.

[3] The Valuation Hearing related to the parties' former matrimonial home situate in Shaw's Bridge comprising of the main house, currently occupied by the Petitioner/Wife and an attached annex, currently occupied by the Petitioner's mother. The main house and annex are located on a site of around 1.110 acres with private landscaped gardens.

Valuations in general

[4] For many years it has been regarded as good practice in the ancillary relief court for the parties to make every effort to try to agree a single joint expert to value property in dispute. This is because of the potential for an escalation in costs and hostility to no purposeful end. In the context

of marital breakdown where parties understandably may be distrustful, it should not surprise that a party who has not been consulted may be suspicious of the valuation unilaterally secured by or for their estranged spouse.

[5] A party no longer occupying a former matrimonial home will often persuade themselves that the property is more valuable than that recited in the valuation secured on behalf of the person who wants to retain the property. In consequence they may decide, at additional cost, to engage a second valuer who may be told that the party paying for the second valuation was unhappy with the first valuation and often this provokes a different valuation and translates into the further cost of the valuers meeting to see if they can resolve their differences. Sometimes there will be the need for a third agreed valuer or a Valuation Hearing all of which causes an increase in costs and acrimony which are an unhelpful precursor to the Financial Dispute Resolution hearing.

[6] The 2006 *Ancillary Relief Practice Guidance Notes* say in the paragraph entitled "Experts":

"Use of expert evidence and advice should be governed by the principles of relevance and proportionality. The expert's fundamental duty is to assist the Court on matters within his expertise (and outwith the Court's knowledge) rather than state simply that which a party wishes him to represent - see comments of Evans and Thorpe LJ in *Vernon v Bosley (Expert Evidence)* (Note) [1998] 1 FLR 297."

[7] Before engaging an expert to value a matrimonial home the parties should set out their views of valuation in affidavit. At the First Review Hearing the gap (if any) can be established and efforts made to identify and instruct one valuer acceptable to both."

[8] *Ancillary Relief Pre-Application Protocol* at paragraph 3.11 states:

"Solicitors should note that from the date of the implementation of this protocol all expert witnesses to include estate agents will be expected to sign an expert's declaration."

[9] *Ancillary Relief Practice Note: July 2012* at paragraph 3 states:

"(ii) the valuation document shall state the identity and qualifications of the valuer and include a signed declaration by the valuer that they have provided an independent valuation. A specimen of a declaration is annexed hereto at annex 2".

(iii) it is preferable in all cases for valuations to be carried out on the basis of a joint instruction in an agreed letter with no discussion or communication between either party and the valuer directly."

[10] *Duckworth Matrimonial Property and Finance (July 2018 update edition)* B1-[66] similarly refers to the fact that

"The court will try to limit the proliferation of expert reports by giving directions for the appointment of a Single Joint Expert. This approach is apt for land and property....."

Background

[11] In this case the parties jointly instructed Timothy Martin (F.R.I.C.S) to value the property. On 12th June 2017 he inspected the property and considering all the information before him he valued

the property at £850,000 (eight hundred and fifty thousand pounds sterling). Having been asked to consider the possibility of separately marketing the dwelling house and the annex, he valued the principal residence at £650,000 and the Annex at £200,000 but was of the opinion that to offer the dwellings separately would have a serious material effect on the value of each property as it would jeopardise the privacy of each property substantially and necessitate additional rights of ways and easements which would decrease the desirability of the property in one or two lots.

Case Reviews

[12] The intended FDR hearing listed for 28/9/2017 was vacated on 5/9/2017. The court was advised that the Respondent/Husband sought discovery and no issue was taken. However, the Petitioner/Wife sought a pension report which would not be ready for the intended FDR hearing date and effectively prevented an FDR proceeding on the intended date. Instead counsel proposed bringing parties to the court to try to narrow issues.

[13] On 28/9/2017, progress was reported but not in relation to the pension report so the case was adjourned until 14/12/2017 when the pension report was still outstanding but expected within 4 to 6 weeks and the case was therefore re-listed for FDR hearing on 19/4/2018.

[14] The case was listed 1/2/2018 in relation to a discovery matter which resolved in the meantime and was again adjourned for the planned FDR hearing on 19/4/2018. On the day of the FDR hearing there was a change in counsel representing the Petitioner/Wife who since that time has been represented by her present counsel. The FDR hearing did not take place as the parties were afforded the opportunity to negotiate and the court was advised that progress had been made which necessitated the Petitioner/Wife making financial service enquiries and in the afternoon of that day the court was asked to list the case for a review in the presence of the parties on 17/5/2018 for the parties to be enabled to progress and hopefully conclude their negotiations.

[15] Early on 17/5/2018 counsel on consent asked that the court to relist the case on 1st June 2018 when counsel intended bringing the parties to negotiate.

[16] On 1st June 2018 for the first time the Court was advised that a Valuation hearing was necessary. The court was advised that valuers engaged in the case were very far apart in relation to their valuations. The Court therefore listed the case for a Valuation Hearing on 26th October 2018, listed the case for FDR hearing on 29th November 2018 at 11.00 and directed that the valuers meet on or before 30th June 2018 and within 7 days thereafter provide an agreed signed minute setting out any unresolved differences, the reasons therefor and any authorities relied on.

[17] The case was subsequently listed on 11/9/2018 as a minute signed by the valuers had not been filed. Therefore the case was adjourned until 18/9/2018 for the valuers to attend unless they provided an agreed signed minute in accordance with the court Order of 1/6/2018. In the meantime a minute signed by all the valuers, reflecting agreement and disagreement about what had been discussed, was duly filed.

The Valuation Hearing

[18] At the Valuation Hearing the Petitioner/Wife's counsel confirmed to the court that, after receiving Mr Martin's valuation of the property, no issues of concern were raised with Mr Martin on behalf of the Petitioner/Wife in advance of the Petitioner/Wife subsequently instructing Mr Timothy Luft from McGeown Estate Agents and later, Mr Patrick Palmer from Templeton Robinson Estate Agents. Counsel said her instructions that morning were that the Petitioner/Wife was unhappy with the instruction of Mr Tim Martin from the outset (notwithstanding that he was an agreed jointly instructed expert).

[19] In the case of *Daniels v Walker* [2000] EWCA Civ 508, Lord Woolf MR considered the approach which judges should adopt when the jointly instructed expert provides a report with which one or other side is unhappy. That case of course pre-dated the practice guidance and protocol detailed earlier herein. I quote extensively from Lord Woolf's helpful outline from paragraph 29 onwards.

[20] In a substantial case such as this, the correct approach is to regard the instruction of an expert jointly by the parties as the first step in obtaining expert evidence on a particular issue. It is to be hoped that in the majority of cases it will not only be the first step but the last step. If, having obtained a joint expert's report, a party, for reasons which are not fanciful, wishes to obtain further information before making a decision as to whether or not there is a particular part (or indeed the whole) of the expert's report which he or she may wish to challenge, then they should, subject to the discretion of the court, be permitted to obtain that evidence.

[21] In the majority of cases, the sensible approach will not be to ask the court straight away to allow the dissatisfied party to call a second expert. In many cases it would be wrong to make a decision until one is in a position to consider the position in the round. You cannot make generalisations, but in a case where there is a modest sum involved a court may take a more rigorous approach. It may be said in a case where there is a modest amount involved that it would be disproportionate to obtain a second report in any circumstances. At most what should be allowed is merely to put a question to the expert who has already prepared a report.

[22] In a case where there is a substantial sum involved, one starts, as I have indicated, from the position that, wherever possible, a joint report is obtained. If there is disagreement on that report, then there would be an issue as to whether to ask questions or whether to get your own expert's report. If questions do not resolve the matter and a party, or both parties, obtain their own expert's reports, then that will result in a decision having to be reached as to what evidence should be called. That decision should not be taken until there has been a meeting between the experts involved. It may be that agreement could then be reached; it may be that agreement is reached as a result of asking the appropriate questions. It is only as a last resort that you accept that it is necessary for oral evidence to be given by the experts before the court. The expense of cross examination of expert witnesses at the hearing, even in a substantial case, can be very expensive.

[23] The great advantage of adopting the course of instructing a joint expert at the outset is that in the majority of cases it will have the effect of narrowing the issues. The fact that additional experts may have to be involved is regrettable, but in the majority of cases the expert issues will already have been reduced. Even if you have the unfortunate result that there are three different views as to the right outcome on a particular issue, the expense which will be incurred as result of that is justified by the prospects of it being avoided in the majority of cases."

[24] As I have already detailed, the jointly instructed expert Mr Timothy Martin provided a report valuing the property on 12th June 2017 at £850,000. It was not indicated to him that the Petitioner/Wife wished to challenge some or all of his report. No further information was sought. This was confirmed to the court by the Petitioner's Counsel at the Valuation Hearing. No opportunity was afforded to the court to consider whether the Petitioner's reasons were fanciful. Instead the Petitioner unilaterally engaged Mr Timothy Luft from McGeowns to carry out a valuation. As a result the court was deprived of the opportunity of dealing with the matter in a meaningful way and time was wasted and continued to be wasted.

[25] In fact two separate valuations were secured on the sole instruction of the Petitioner/Wife. The Petitioner's counsel stated that coming up to the intended FDR hearing the Petitioner sought a valuation from Mr Patrick Palmer of Templeton Robinson Estate Agents on 14th May 2018. In fact the

intended FDR hearing date of 19/4/2018 had passed but the court had facilitated a review in the presence of the parties on 17th May 2018 and the said valuation appears to have been secured in advance of that.

[26] As a result, three valuers attended to give evidence to the court. The Petitioner called Mr Timothy Luft of McGeown Estate Agents and Mr Patrick Palmer of Templeton Robinson, Estate Agents to give evidence. The Respondent called Mr Timothy Martin of Tim Martin, Estate Agents to give evidence.

Mr Timothy Luft

[27] Mr Timothy Luft carried out his valuation on 17th August 2017 and in a five line letter of the same date addressed to the solicitors for the Petitioner confirmed that:

“Further to your instructions, we have as requested carried out an Open Market Valuation of the above noted property as of today’s date.

In our opinion the current Open Market Value would be in the region of £675,000 (Six Hundred and Seventy Five Thousand) Pounds.”

[28] The letter did not contain the expert’s declaration and is bereft of all detail including measurements, location and presentation. Mr Luft adopted the document as his evidence. However, when cross examined he accepted that if providing a report for the court, the letter was not something which he would regard as acceptable.

[29] When asked how he came to be instructed to carry out a valuation of the former matrimonial home, Mr Luft recalled that he received a telephone call from the Petitioner/Wife saying he should expect a telephone call from a solicitor. He believed he was then contacted before he went to carry out his valuation of the property. Certainly his letter is addressed to the Petitioner’s solicitor and references the solicitor’s instructions.

[30] Mr Luft confirmed in evidence that he has no professional qualifications but stated that he had been in practice as an estate agent for over 35 years and in practice for over 27 years operating in the area of South Belfast.

[31] He described the subject property as being a mature property located in the rural Edenderry area, set in large grounds but requiring modernisation. He felt in relation to the main house nothing much had been done to it for many years and that areas of repair were required. Money would need to be spent to bring it up to modern standards. He considered that the annex on the other hand was practically a new building, in very good condition with a slightly odd lay out which was specific to the family circumstances. He felt the annex was not a bonus and that it would have been better if the original house had been left alone. When asked to consider whether the annex would be attractive as accommodation for an au pair or elderly parents, Mr Luft said that few families had those circumstances. He said the property was located off a long laneway with another property located at the top of the laneway. He estimated the site of the property as being in excess of half an acre.

[32] Under cross examination Mr Luft confirmed that when he inspected the property he did not take measurements, he did not know the square footage of the property and he did not measure the site. He thought the property was around a half acre in area. It was put to him that in fact the property is more than an acre in area.

[33] The valuers all were in agreement that the principal residence and annex would realistically be marketed as one lot. Mr Luft did not provide any separate valuation for each.

[34] Mr Luft considered Mr Martin's valuation as being very high and suggested Mr Martin was not a local agent whereas he felt he was a local estate agent. Specifically, Mr Luft took issue with Mr Martin's reference to Malone property sales in support of his valuation of the subject property. Mr Luft felt one property was rural and the other was urban and the difference was akin to the difference between night and day.

[35] As to Mr Patrick Palmer's valuation, Mr Luft in cross examination confirmed his view that even though Mr Palmer at the valuers' meeting revised his valuation upwards from £475,000 to £550,000, Mr Palmer was "wrong even at £550,000".

Mr Patrick Palmer

[36] Mr Palmer of Templeton Robinson provided his initial valuation on 14th May 2018. He stated that he was initially asked to carry out a verbal valuation and confirmed in cross examination that he was subsequently asked to put his opinion in writing by the Petitioner's brother. Mr Palmer said he knew the Petitioner's brother because he was a couple of years above him in school

[37] Mr Palmer confirmed that he had no formal qualifications saying that his qualification was his experience. He said he had operated as an Estate Agent for more than 30 years, more than 20 years of which were with Templeton Robinson Estate Agents.

[38] In essence Mr Palmer shared the view that property sales in Malone did not represent an appropriate comparable when valuing a property in the rural location of the former matrimonial home. Mr Palmer shared Mr Luft's view what the annex was modern but the primary residence required updating and believed that the addition of the annex did not add value. It was interesting to hear that Mr Palmer had himself lived in the Malone area and had moved with his family to the Drumbo area, attracted by the rural location.

[39] Mr Palmer's valuation is lower than the valuation offered by the originally instructed joint valuer, Mr Martin and has been stated to be wrong by Mr Luft who gave evidence on behalf of the Petitioner. Having heard all of the evidence I do not intend to rely on the valuation offered by Mr Palmer.

Mr Timothy Martin

[40] Mr Martin gave evidence that he is a Fellow of the Royal Institute of Chartered Surveyors, Vice Chair of the Rural Valuers Association and has approximately 47 years' experience as an estate agent engaged in the sale of a wide range of properties mainly in the County Down area but incorporating East and South Belfast.

[41] Mr Martin confirmed he received a joint instruction on behalf of the parties to value the former matrimonial home for matrimonial purposes, attended at the property and prepared his valuation dated 12th June 2017.

[42] Mr Martin described the property as a substantial family residence on a 1.1 acre site in its own grounds approached by a shared tarmac drive with one other property on the drive. He confirmed that as with any valuation he carried out he checked the land registry folio to ensure that there were no boundary, right of way or easement issues. In checking the folio and from discussions with the owners he did not anticipate problems but he said if a separate sale of the annex was attempted a right of way would have to be secured from the owner of the principal residence.

[43] Mr Martin valued the property as one entity. In relation to the annex/apartment he believed that while some might not use it, a lot would like it and therefore it had benefits which would be of interest to a range of purchasers. He felt it would be attractive to a family for an older family member or child of the family. He also felt that it could be attractive as consulting rooms which could be directly accessed from but separate to the primary residence.

[44] Mr Martin said he considered that the property was overall in a pretty good state of repair albeit that it could benefit from modernisation which would be a matter of choice. He felt that in terms of the order of what was most important for prospective purchasers, he felt it would be a "close run race" between location and size and scope. He said he hadn't costed the type of work necessary which was not within his expertise. He was asked about £100,000 suggested by Mr Luft as being necessary to modernise the property. Mr Martin said he believed it would not cost anything like £100,000 to carry out repairs and modernisation was a matter of personal taste. He said that there was a Robinsons' kitchen in the property which was supposed to be timeless. Under cross examination Mr Martin said that the property needed some updating but was not as bad as was portrayed by the other valuers. He was unable to comment on whether the décor had not changed since the parties married. He did not consider it an issue that one of the five bedrooms was accessed from another bedroom.

[45] He said he felt that the location was exceptional and according to a search he made on "route finder" measured exactly 1.5 miles from the House of Sport roundabout. He said the site was elevated and private suggested another property along the road meant the property was not totally isolated. He considered the property to be a very desirable lovely family sized house with four enSuites which would benefit families with teenage children and as it was surrounded by National Trust property, this permitted lovely walks.

[46] Mr Martin had presented photographs of the principal residence but was not permitted to photograph the annex. When, after the court's agreed direction, Mr Martin arranged for a photographer to attend at the property to take photographs, the photographer was advised by the Petitioner/Wife's brother that the planned aerial photographs and photographs of the annex would not be permitted.

[47] Mr Martin did not share the view of Mr Luft and Mr Palmer that comparing Malone property to the former matrimonial home was like comparing night and day. He said while he accepted that people wanted to live in Malone, there were people who lived in Malone who wanted to move further out into the country as Mr Palmer had himself done. He said he gave details of the Malone sales to give a flavour of what property sale prices were in the general area. He felt it showed that buying the detached house which was the former matrimonial home located 1.5 miles away represented good value for money. Under cross examination he said he would not disagree that Malone was one of the most desirable areas. He said one area was urban and the other was semi-rural.

[48] When cross examined about the difference between his, Mr Luft's and Mr Palmer's valuation, Mr Martin said that he felt Mr Luft's valuation was certainly more realistic than Mr Palmer's but he did not think that Mr Luft had taken account of the full benefits of the property

The suggested comparable properties

[49] The valuers variously presented the details of a number of properties which they suggested were comparable properties for the purpose of supporting their respective valuations. It is fair to say that no properties were exactly the same or even almost the same. The Malone properties were urban properties, the rural properties were in the main of different size and standard. There was no property of the same property size and standard, site size, with the same views and in the same

location. It is for this reason that valuations are often stated not to be an exact science and parties and the court will depend on an impartial and experienced valuer in arriving at a fair value.

The properties at (i) 35 Drumbo Road, Drumbo, (ii) 3 Mill Road, Drumbo and (iii) 46 Ballycoan Road, Belfast suggested by (i) Mr Martin, (ii) Mr Palmer and (iii) Mr Luft respectively appeared to represent the most relevant of the properties suggested as comparable when valuing the former matrimonial home.

46 Ballycoan Road

[50] Mr Luft referred to the sale of 46 Ballycoan Road, a rural property located approximately half a mile from the former matrimonial home which sold for £695,000. He said the property was brand new and therefore would have no maintenance issues for a number of years. He said that the property was on a slightly smaller site than the subject property but maintained that simply because the subject property was on a bigger site did not increase the value of the property. He felt that his former matrimonial home valuation of £675,000 allowed scope for someone to put money into improving the property.

[51] Under cross examination Mr Luft conceded that the Ballycoan Road property was a smaller property. It was put to him that according to the EPC (Energy Performance Certificate Rating), the property measured 3486 square feet rather than the 4200 square feet represented in the McGeown marketing brochure which Mr Luft said he had obtained from the architect. This meant the property was almost 2000 square feet smaller than the former matrimonial home which measured 5319 square feet. In addition, the actual site of the Ballycoan Road property was less than half the size of the former matrimonial home site and it was put to Mr Luft that the Ballycoan property did not have an annex or landscaped gardens. Nevertheless, Mr Luft felt that the sale was a useful comparable on account of location as both were rural properties in the BT8 area and although the former matrimonial home was bigger, he felt the Ballycoan property was slightly closer to the shops and a slightly better address.

[52] Mr Martin felt the Ballycoan Road comparable was interesting bearing in mind that though it was a nice property it was a smaller property and the sale price of £695,000 should be seen in that context.

43 Mill Road, Drumbo

[53] Mr Palmer had referred to the property at 43 Mill Road, Drumbo which was agreed for sale at £495,000. Under cross examination Mr Luft agreed that 3 Mill Road was a smaller property than the former matrimonial home and he agreed the matrimonial home was in a better location and on a better site with elevated views. He accepted he was only crudely aware of the property.

[54] Mr Martin did not consider 3 Mill Road, Drumbo represented a good comparable being smaller, and in a poorer location. Moreover, he stated that he was advised by the selling agent that the property was in a very run down state having been left in a very poor condition by tenants. Under cross examination Mr Martin agreed that the Mill Road property had an annex and double garage whereas the former matrimonial home no longer had a garage.

35 Drumbo Road, Drumbo

[55] Mr Martin considered the property at Drumbo Road was a relevant comparable sale. This was a significant rural property with four bedrooms with bathrooms and en-suites and a separate annex above a detached double garage, which Mr Palmer felt was comparable to the former matrimonial home in size but there was no comparison with regard to standard. Mr Martin described the property as being very modern and 3195 square feet in size according to the EPA. He

believed the property sat on a site of around half an acre and therefore was much smaller. He considered that the location was more rural and that the fact that the annex was detached was not necessarily an advantage, if additional accommodation was required.

[56] At the Valuers' meeting on 25th June 2018, Mr Martin referred to the property having a value of £1,250,000 having been told by the selling agent the property had been agreed for sale at that price. However, Mr Palmer said the property in fact sold for £1,025,000 so after the Valuers' meeting Mr Martin again checked the price and was again told the sale price of £1,250,000 which was only corrected by the selling agent late the previous day. As a result, Mr Martin in his evidence confirmed the sale price of £1,025,000. Mr Palmer also stated that he was advised the sale figure included contents valued at £30,000. However, Mr Martin was not able to accept that and said he had not been told that.

[57] Mr Martin believed if the subject property was of similar condition it would attract a higher price. As it stood the former matrimonial home had bigger grounds, mature landscaped gardens. Under cross examination Mr Martin said it would not surprise him that the tennis court had not been used for some considerable time but on the whole he maintained updating the former matrimonial home would be a matter of personal taste rather than necessity.

Conclusions

[58] Having heard all of the evidence and having already stated I do not rely on Mr Palmer's valuation, I reach the following conclusions:

- (1) Mr Martin had been engaged as a joint valuer on behalf of both parties and for the reasons given in his report and expanded upon in his evidence, gave what in his opinion was a fair and impartial value of the property, reflected in the figure of £850,000.
- (2) Mr Martin with his qualifications and experience was well placed to provide a valuation of the subject properties.
- (3) Mr Martin should have been afforded the opportunity to consider and address any concern raised by either party in relation to his valuation. I do not regard the unilateral instruction of another valuer and without reference to the court to represent good practice.
- (4) Mr Luft and Mr Palmer were not better qualified in qualifications and experience to provide an independent valuation of the property for the parties.
- (5) Mr Luft was qualified in experience to give a valuation but I weigh his evidence against the fact that he was solely instructed by the Petitioner/Wife to give a valuation for her benefit. The very short letter containing his valuation does not meet the standard of report expected by this court. Moreover, the failure to complete and sign the required expert's declaration which reminds the court and the writer of the importance of independence and the awareness of the expert's obligations, unhappily serves to weaken his valuation given on 17/8/2017 and which remained unchanged thereafter.
- (6) The sale of 46 Ballycoan Road for £695,000 relied on by Mr Luft as a comparable property though an attractive modern property, was a much smaller property, on a site which was half the size of the former matrimonial home and without the mature gardens of the former matrimonial home.
- (7) I do not accept Mr Luft's valuation of £675,000 represents a fair value for the former matrimonial home.

- (8) On the basis of all the evidence presented I conclude Mr Martin's valuation of £850,000 represents a fair value, save in one small respect. I conclude that the property could benefit from some modernisation and therefore I reduce the value to one of £800,000 to allow for that.
- (9) The value of £800,000 represents full market value. It does not take account of other matters relevant to the ancillary relief claims of the parties which include the impact, if any, of and the background to the Petitioner's mother's occupation of the annex at the former matrimonial home. Such matters will be addressed at the Financial Dispute Resolution hearing to take place on 29th November 2018.

Order accordingly.