

*Cunniffe v. Whyte - [2022] IECA 272 - Court of Appeal (Civil) - Allen J - 30 November 2022)*

Appeal against dismissal of proceedings pursuant to s.71 of the Statute of Limitations 1957 - action was commenced on 4 May 2016 - the claims made went back to the date of the parties' father's death on 30 September, 1987 – nearly thirty years previously – and events of 2003 and 2004 – eleven or twelve years previously – appellant claimed (1) that she had not been paid all of her share of the estate, (2) that the respondents had reneged on an agreement that she would be entitled to reside in the former family home, and (3) that by reason of the matters complained of she had suffered personal injury, long predated the issue of the plenary summons - applicant was given the opportunity to demonstrate and rely on fraud as a reason for the Statute of Limitations not applying in matters concerning the administration of her late father's estate - appellant had to prove fraud in order to obviate the effects of the Statute of Limitations - appeal dismissed - legislative policy of the Statute of Limitations is to prevent the litigation of stale claims.

*In re the Estate of Margaret Stella O'Reilly – [2022] IEHC 663 - High Court - Roberts J – 21 November 2022*

Executors applied for an order admitting deceased's Will to proof in common form - deceased died had resided in nursing home since 2010 and died in 2018 - At that time (and since 2010) the deceased was resident in a nursing home - one of the causes of death recorded in death certificate was “advanced dementia” and “cognitive impairment” - deceased died almost 6 years after making will in 2012 - held Will was duly executed and rational on its face - in light of all the evidence before the Court, despite her underlying depression and dementia, the deceased had testamentary capacity in July 2012 and she made the will in the knowledge that it would deal with her estate on death as she wished it to.

*In re the Estate of John Coughlan (Deceased) - [2022] IEHC 604 - High Court - Butler J – 3 November 2022*

Application in non-contentious probate list to cancel a grant of probate in respect of a will made by the deceased in 2012 - doctrine of dependent relative revocation - a second will of 2015, formally revoking the 2012 will, was subsequently destroyed by the deceased in the mistaken belief that the revocation of the 2015 will would revive the 2012 will - belief based on legal advice from his solicitor - applicants applied for a grant of probate of the 2012 – held that the doctrine of dependant relative revocation applied in circumstances where the deceased's intention to revoke the 2015 will was conditional on his mistaken belief that doing so would revive his 2012 will - the purported revocation of the 2015 will was this not valid.

*S.M. v. S.L. - [2022] IEHC 585 - High Court - Butler J – 25 October 2022*

Substantive hearing of subject matter of [2022] IEHC 449 below - question as to who should be entitled to representation in intestate estate of deceased: the deceased's mother or surviving spouse who had executed a Separation Agreement but now claimed she had done

so, *inter alia*, under duress or lacked capacity to do so - held that a separation agreement entered into between the deceased and his spouse, in which said agreement the spouse waived her rights to the deceased's estate, is voidable rather than void, and unless the separation agreement is voided by a court, it should be treated as presumptively valid - court refuses the mother an *ad litem* grant to bring proceedings against the spouse in connection with the spouse's occupation of one of the deceased's properties as an order has been made in favour of the mother allowing her to extract a grant of administration proper and no additional purpose would be served by making a second order.

*S.M. v. S.L.* - [2022] IEHC 449 - High Court - Butler J – 11 July 2022

Application in non-contentious probate list as to who should be entitled to representation in intestate estate of deceased: the deceased's mother or surviving spouse who had executed a Separation Agreement – preliminary question as to whether proceedings should be heard *in camera* as they concerned to previous family law proceedings – held that the matter would be heard *in camera* due the nature of the proceedings, the court having an inherent or common law jurisdiction to hear the matter in private notwithstanding the general constitutional principle that justice should be administered in public.

*In re Kench-Andrews* - [2022] IEHC 417 - High Court - Butler J – 1 July 2022

The deceased prior to executing a will in the United Kingdom executed a will in Ireland which disposed of her Irish estate - her assets in Ireland consisted solely of a holiday house which she left to the second applicant, a neighbour and friend who was also appointed the sole executor of her estate - the subsequently executed UK will contained a revocation clause which purported to revoke “all earlier wills and testamentary dispositions” - application in the non-contentious Probate list brought jointly by one of the executors to her UK will and executor under Irish will - two reliefs sought: a declaration that the Irish will was not revoked by the subsequent UK will; an order granting the executor named in the Irish will liberty to extract a grant of probate in respect of that will. All beneficiaries under the UK will consented – held that, notwithstanding the lack of objection from those who might otherwise stand to benefit if the application were disallowed, Court could not accede to the application - the applicants had not discharged the very heavy onus of proof to show that the revocation clause in the UK will did not revoke the earlier Irish will - the evidence available to the court was not sufficient to enable her to be satisfied of this.

*Campbell v. Geraghty Executor Of Margaret Ahern Deceased* - [2022] IEHC 241 - High Court - Butler J – 27 April 2022

Claim against estate of deceased mother for specific performance of agreement to leave house to plaintiff daughter – application by defendant to dismiss for delay and/or for want of prosecution – held that the delay was inordinate but at the moderate end - the balance of justice weighs in favour of allowing the plaintiff to continue as she would otherwise lose all possibility of recovering the significant sum which she claims to have invested in a property pursuant to agreement with the deceased – Butler J noted that the litigation would deplete the estate so exercised jurisdiction under s.16 of the Mediation Act 2017 to invite the parties to mediate.