

A.B. v. C.D. [2023] IEHC 211 - High Court - Stack J, 27 April 2023

Application for limited grant pursuant to s.27(4) of the Succession Act 1965 - High Court determines that special circumstances exist such that the half-sister, and not the natural parents of, a deceased schoolgirl be granted letters of administration, limited to the purposes of taking custody of the body and arranging the wake, the funeral, and burial of the deceased, and the erection of a headstone in relation to the deceased - schoolgirl who recently took her own life had been in care since she was approximately 18 months old and had not lived with her parents since then - difference of opinion between the parents and the deceased's remaining family members as to where the deceased should be buried - well established at common law that it is the legal personal representative who has the duty and entitlement to take possession of the body and arrange for the funeral and burial - parents would be the persons first entitled to take out a grant - half-sister next group - jurisdiction in special circumstances to appoint someone other than who is entitled pursuant to the rules - whether there were special circumstances which made it "necessary or expedient" for the applicant, as a half-sibling of the deceased, to be permitted to extract a grant of letters of administration of the estate of the deceased, in preference to the respondents, who had a prior entitlement - factors relevant to the exercise of the discretion included that deceased was not living with her parents and had not lived with either of them since she was a very young child - *"In considering the wishes of the family, it is of course appropriate to have regard to the wishes of the natural parents, but where these are in conflict with the remaining family members with whom the deceased actually lived for the greater part of her life, it seems to me that the wishes of those other family members, being the applicant and the remaining family members who are of the same view, must be prioritised"*.

C.D. v. B.B. [2023] IEHC 204 - High Court - Stack J - 24 April 2023

High Court refuses application to come off record in probate proceedings which have already been at hearing for 19 days, on the grounds that the medical reports fail to rebut the presumption of capacity.

Applicant seeking declaration that she is a "qualified cohabitant" pursuant to s.194 of the Civil Partnership and Certain Rights and Obligations of Cohabitation Act 2010- application by her solicitors to come off record on grounds of capacity - proceedings had already been at hearing for 19 days - medical report tendered - proceedings may be maintained on their behalf by a Next Friend but they were advised of the risk that they would have to bear the costs if the proceedings were unsuccessful and they declined to act - application heard by a different judge - relief refused - referral of a person to a Medical Visitor who was satisfied that the applicant had capacity to make health and welfare decisions, and decisions relating to property and financial affairs - Court satisfied that the applicant understands the nature of the proceedings in which she is involved, their ultimate purpose, and the central issues in the case, as well as the type of evidence which is material to those issues and which might be helpful to her case - application to come off record refused - *"The onus of proof is on the applicant's solicitors to rebut the presumption of capacity and I do not believe that it has been discharged."*

Eastwood v Richards - [2023] IEHC 307 - High Court (General) - Mulcahy J - 12 June 2023

Plenary proceedings seeking to prove a will in terms of a copy – Allen J had previously determined that oral evidence was required - Defendants counterclaimed for rents collected by plaintiffs not accounted to estate - administrator ad colligenda bona appointed – Plaintiffs sought modular trial of counterclaim, relying on *Donatex Limited v Dublin Docklands Development Authority* [2011] IEHC 538 – logical distinction of issues – no prejudice from separation – order granted – counterclaim proceedings stayed - *“Even if there proves to be no narrowing of the issues, it seems to me that the only duplication of effort if the counterclaim is stayed pending the determination of the Plaintiffs’ claim will be that of the parties themselves, some of whom may, as a consequence, have to give evidence more than once. This does not seem to me to be the type of “true prejudice” contemplated by Clarke J. in Donatex and it is, in my view, a price worth paying to enable early progress on the question of proving the will and the potential for time and costs savings”.*