

THE HIGH COURT

2003 No. 500 SP

IN THE MATTER OF THE ESTATE OF PHILIP MARKEY, BUSINESSMAN, LATE OF CURRAGH LAWN NURSING HOME, KINNEAGH,  
CURRAGH, CO KILDARE AND FORMERLY OF 'THE STRAY INN', MILE MILL, KILCULLEN, CO KILDARE, DECEASED

JOHN O'CONNOR

APPLICANT

– AND –

GERARD MARKEY AND JAMES KELLY, AS THE PERSONAL REPRESENTATIVE OF THE LATE MARY MARKEY

RESPONDENTS

**JUDGMENT of Mr Justice Max Barrett delivered on 19th November, 2018.**

1. By order of 11th June, 2018, Baker J. ordered "*pursuant to Section 27(4) of the Succession Act 1965 that **James Kelly** be at liberty to apply for and extract a Grant of Letters of Administration Ad Litem in the estate of the said deceased **limited for the purposes of substantiating proceedings intended to be instituted by James Kelly on behalf of the estate and/or continuing existing proceedings between John O'Connor Plaintiff and Gerard Markey and Mary Markey Defendants***". [Emphasis in original]. There was some suggestion at the hearing of the within application that the order made by Baker J. was not the order that had been sought of her, but clearly it is the order that Baker J. was prepared to give; many people come to court seeking one order and find that a judge is only prepared to make some other order.

2. Notably, under the terms of the order Mr Kelly is authorised to apply for and extract a grant of letter of administration *ad litem*. Yet on 6th July, 2018, by way of *ex parte* application before the High Court, Mr Kelly, pursuant to O.17, r.4 of the Rules of the Superior Courts 1986, as amended, had the title of the within proceedings amended so that the name of the second-named defendant ("MARY MARKEY") was replaced by "JAMES KELLY, AS THE PERSONAL REPRESENTATIVE OF THE LATE MARY MARKEY". Mr Kelly is not the personal representative of the late Ms Markey and ought not to be named as such in the within proceedings.

3. In the notice of motion now before the court, Mr Kelly seeks certain reliefs of the court in his purported capacity as the personal representative of the late Ms Markey. Mr Kelly is not the personal representative of the late Ms Markey and is not therefore entitled to any reliefs sought by him in that capacity.