

Appendix FF

No. 2

O. 58, r. 18(1)



**SUPREME COURT**

**Respondent's Notice**

Supreme Court record number	S.AP:IE :2017:000060
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[Title and record number as per the High Court proceedings]

Patrick Nevin and Margaret Lavelle (formerly Nora Nevin)	V	Catherine Nevin
High Court Record No. 1997/1300P	Court of Appeal Record No. 2014/794 and 2014/771	

Date of filing	2 May 2017
Name of respondent	Patrick Nevin and Margaret Lavelle
Respondent's solicitors	Kennedy Fitzgerald Solicitors
Name of appellant	Catherine Nevin
Appellant's solicitors	Fitzgibbon and Company Solicitors

**1. Respondent Details**

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name	Patrick Nevin and Margaret Lavelle
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The respondent was served with the application for leave to appeal and notice of appeal on date
25 <sup>th</sup> April 2017

**The respondent intends :**

<input type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
<input checked="" type="checkbox"/>	to oppose the application for leave to appeal
<input type="checkbox"/>	not to oppose the application for leave to appeal
<input checked="" type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
<input type="checkbox"/>	to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court
<input type="checkbox"/>	Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal: ☒

**Respondent's Representation**

<b>Solicitor</b>			
<b>Name of firm</b>			
<b>Email</b>			
<b>Address</b>		<b>Telephone no.</b>	
		<b>Document Exchange no.</b>	
<b>Postcode</b>		<b>Ref.</b>	
<b>How would you prefer us to communicate with you?</b>			
<input checked="" type="checkbox"/>	<b>Document Exchange</b>	<input checked="" type="checkbox"/>	<b>E-mail</b>
<input type="checkbox"/>	<b>Post</b>	<input type="checkbox"/>	<b>Other (please specify)</b>

<b>Counsel</b>			
<b>Name</b>			
<b>Email</b>			
<b>Address</b>		<b>Telephone no.</b>	
		<b>Document Exchange no.</b>	
<b>Postcode</b>			

<b>Counsel</b>			
<b>Name</b>			
<b>Email</b>			
<b>Address</b>		<b>Telephone no.</b>	
		<b>Document Exchange no.</b>	
<b>Postcode</b>			

**If the Respondent is not legally represented please complete the following**

<b>Current postal address</b>
<b>Telephone no.</b>
<b>e-mail address</b>

**How would you prefer us to communicate with you?**

<input type="checkbox"/>	<b>Document Exchange</b>	<input type="checkbox"/>	<b>E-mail</b>
<input type="checkbox"/>	<b>Post</b>	<input type="checkbox"/>	<b>Other (please specify)</b>

## **2. Respondent's reasons for opposing extension of time**

**If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused**

~ / A

## **3. Information about the decision that it is sought to appeal**

**Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:**

~ / A

## **4. Respondent's reasons for opposing leave to appeal**

**If leave to appeal is being contested, set out concisely here the respondent's reasons why:**

1. The Decision in respect of which Leave to Appeal is sought does not involve a point of law of exceptional public interest as alleged in paragraph 5 of the Application for Leave to Appeal, or at all.
2. The Judgments of the Court of Appeal are not decided on the interpretation of Section 120(1) or 120(4) of the Succession Act, 1965, as alleged in paragraph 5 of the Application for Leave to Appeal, or at all, but are based on the common law and law of evidence. See paragraph 25 of the Judgment of Hedigan J and paragraphs 11 and 17 of the Judgment of Finlay Geoghegan J., with whom Irvine J concurred.
3. The Judgments of the Court of Appeal simply deal with the admissibility of evidence in Civil Proceedings, namely the Certificate of Conviction of the Applicant, Catherine

Nevin, in the Central Criminal Court on 11<sup>th</sup> April 2000, following a Trial of 42 days before a Judge and Jury in the Central Criminal Court, (a Trial during which the Applicant herself gave evidence on oath), of the murder of her husband, Thomas Nevin, as prima facie evidence of the fact that she murdered her said husband, and does not interfere with her right to call such evidence as she may see fit, or to cross-examine such witnesses as the Respondents may call at the Trial to give evidence. The said conviction was upheld by the Court of Appeal on 14<sup>th</sup> March 2003. Finlay Goeghegan J., with whom Irvine J. concurred, concluded her Judgment saying:

*“It is also necessary, as to exclude admission of the conviction as evidence would, as put by Kearns P., ‘be contrary to logic and common sense and offend any reasonable person’s sense of justice and fairness’.”*

4. The Decisions of the High Court and of the Court of Appeal are contained in reasoned Judgments of both Courts containing correct statements of law. The Decision in respect of which Leave to Appeal is sought does not involve a matter of general public importance.
5. The Decision in respect of which Leave to Appeal is sought is not, in the interests of justice, necessary that there be an appeal to the Supreme Court.
6. The Applicant did not first apply to the Court of Appeal from whose Decision the Applicant is seeking Leave to Appeal, as required by the Rules of Court.
7. The Applicant did not serve Notice of Appeal on the Respondents within seven days of filing the Notice of Application for Leave to Appeal to the Supreme Court, as required by the Rules of Court.

##### 5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

1. The Judgments of the Court of Appeal are not decided on the interpretation of Section 120(1) or Section 120(4) of the Succession Act, 1965, as alleged at points 3 and 4 of the Grounds of Appeal in paragraph 6 of the Application for Leave to Appeal, but are based on the common law and the law of evidence. See paragraphs 11 and 17 of the Judgment of Finlay Geoghegan J., with whom Irvine J. concurred, and paragraph 25 of the Judgment of Hedigan J.
2. The Court of Appeal correctly found that the Certificate of Conviction of the Appellant, Catherine Nevin, , in the Central Criminal Court on the 11<sup>th</sup> April 2000, before a Judge and Jury, at a Trial which lasted some 42 days, (a Trial during which the Appellant herself gave evidence on oath), of the murder of her husband, Thomas Nevin, as prima facie evidence of the fact that she murdered her said husband. The said finding of the Court of Appeal should be upheld.
3. The Judgments of the Court of Appeal that the Certificate of Conviction of the Applicant/Appellant for the offence of murder was admissible was not grounded "*as a newly identified exception to the hearsay rule*", as alleged at Ground 1 of paragraph 6 of the Application for Leave to Appeal. In paragraph 27 of her Judgment, Finlay Geoghegan J. said:

*"Notwithstanding, I am of the view that the Decision of the Trial Judge should be upheld and insofar as it may be considered that the admission of the conviction in the present proceedings involves an extension to the exceptions to the rule against hearsay, it is justified both upon the grounds of necessity and relevance...."*

The said finding by the Court of Appeal should be upheld: Finlay Geoghegan J. concluded her Judgment saying "*It is also necessary as to exclude admission of the conviction as evidence would, as put by Kearns P., 'be contrary to logic and common sense and offend any reasonable person's sense of justice and fairness.'*" That said

Finding should be upheld.

4. Hedigan J. held that the Certificate of Conviction was admissible at common law as a public document: That said Finding should be upheld.

5. The Judgments of the Court of Appeal should be upheld.

**Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:**

George Brady S.C.

**6. Additional grounds on which decision should be affirmed**

**Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:**

N/A

**Are you asking the Supreme Court to:**

**depart from (or distinguish) one of its own decisions?**

☐ Yes

☒ No

**If Yes, please give details below:**

**make a reference to the Court of Justice of the European Union?**

☐ Yes

☒ No

**If Yes, please give details below:**

Will you request a priority hearing?	<input checked="checked" type="checkbox"/> Yes	<input type="checkbox"/> No
If Yes, please give reasons below:		
On the basis of the antiquity of the proceedings and on the basis of the reason proffered on behalf of the Applicant in Form no. 1 that she is terminally ill.		

Signed: KENNEDY FITZGERALD  
Kennedy Fitzgerald  
Solicitor for the respondent  
The Waterfront  
Bridge Street  
Galway

Please submit your completed form to:

The Office of the Registrar to the Supreme Court  
The Four Courts  
Inns Quay  
Dublin

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.