

Hierlihy v. Hierlihy and Hierlihy

Vernon Hierlihy, Plaintiff and Ruth Hierlihy, First Defendant and James
Hierlihy, Second Defendant

Newfoundland Supreme Court (Trial Division)

Barry J.

Judgment: December 18, 1986

Docket: No. G-53 (S.C.)

Counsel: *David Day, Q.C.*, for the defendants.

Barry, J.:

1 This is an action for eviction taken by the plaintiff against his wife and son in respect of their matrimonial home. The matter has been ongoing for some seven years, and the plaintiff has dragged his feet about proceeding to the point where the defendant was obliged to take action to bring the matter to court and to seek a dismissal. The plaintiff, having been served by a request for dismissal by the defendant, has not appeared today in response to it. He has filed a notice of discontinuance which is not sufficient to stay the hearing of this application made by the defendant. Under the circumstances I have to accept the affidavits and the order requested by the defendants and I dismiss this action. I dismiss it with costs as between the parties, and I award solicitor and clients cost from the point where the defendant applied for an order for substitutional service and in respect of the various efforts made by them to effect the service.

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