Hewitsons
Will & Estate Disputes

LEGAL UPDATE

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Deceased's decision to disinherit daughter for unkindness upheld by High Court

Maudlin Bascoe's daughter, Patricia Johnson, sought to challenge the validity of her late mother's 2005 Will, within which she was left £100 only. The High Court found against Patricia and upheld the 2005 Will.

Maudlin died aged 96 in 2015. She had four children and eight grandchildren. Maudlin's daughter, Patricia, claimed that her brother Barnaby, had procured the 2005 Will by undue influence and forgery. Barnaby was also one of the appointed executors under Maudlin's 2005 Will. Patricia further claimed that their mother lacked both testamentary capacity and knowledge and approval.

It was accepted that prior to 2005, Maudlin had changed her mind several times, as to the amounts to leave each of her children; especially her daughters Patricia and Beverley. Whilst there were no solicitor's attendance note records available to explain why Maudlin had decided to reduce Patricia's legacy to £100 and Beverley's legacy to £50, an explanatory note to the Will (drafted in 2003), did offer an explanation. The note stated:

"both my daughters have shown very little care and concern for me in my later years and in particular they have both been rude, unpleasant and in some instances physically violent and abusive towards me and have verbally expressed their lack of care and concern... I therefore have no desire that they should benefit from my estate over and beyond the legacies I have made in this will."

Maudlin's medical records did not support a challenge based upon lack of testamentary capacity. Further, Maudlin's solicitor gave evidence that in his opinion Maudlin had capacity and gave her instructions free of influence. He had also read out the Will to her before she executed the same.

The High court granted probate of the 2005 Will, dismissing all grounds that Patricia sought to rely upon. The Judge concluded by noting that Patricia had come "*nowhere near*" to establishing the basis for any proper challenge, noting the lack of documentary evidence produced in support of her claim, or evidence from independent third parties.

Case Citation: *Barnaby v Johnson* [2019] EWHC 3344 Ch

Application by a spouse for interim relief under the 1975 Act

In the recent case of *Weisz v Weisz*, the Deceased's widow was granted interim provision of £5,200 per month, pending conclusion of her claim under the Inheritance (Provision for Family and Dependants) Act 1975 ("the 1975 Act").

The Deceased's net estate is worth approximately £4m. Under his last Will, the Deceased left his half share of the matrimonial home (subject to a mortgage) to his wife, Mrs Weisz. Mrs Weisz brought a claim under the 1975 Act against the Deceased's estate, seeking greater provision. Her claim is defended by the Deceased's children from a previous marriage, who are entitled to the residue of their father's estate under his Will.

Section 5 of the 1975 Act allows the court to grant interim provision for the applicant from the Deceased's estate, where the applicant is in immediate need of financial assistance. Mrs Weisz made an application under S.5 for monthly payments to be made to her from the Deceased's estate of £8,511.78, a payment of £20,000 in order to repay a loan, together with a payment of £55,578 towards her legal fees.

The Judge analysed the figures claimed by Mrs Weisz against the criteria for 'immediate need'. He found that £5,000 for interior/exterior decoration and repairs, averaged over five years, did not constitute immediate need. This figure was accordingly reduced to £1,000. Overall, Mrs Weisz's claimed housing needs of £6,500 were reduced to £2,500. The claim of £12,380 for clothes, footwear, accessories, jewellery and evening wear, was reduced to £3,000 and her claim of £31,400 for holidays, entertainment and hobbies, was reduced to £8,000. The judge stated that Mrs Weisz was entitled to holidays but that it was not possible to reconcile a claim of £20,000 for holidays with 'immediate need'.

Mrs Weisz's claim for £20,000 to repay a loan was rejected. In relation to her legal fees, the Judge held that it was unreasonable for her solicitors to have to act as a creditor, when there was plenty of money within the estate from which fees could be paid. The full amount claimed of £55,578 was awarded. It was relevant in this case, that the Judge felt that Mrs Weisz was likely to be successful in her claim against the estate at a final hearing; the estate having already made an open offer to Mrs Weisz to pay her maintenance of £4,000 per month.

In his judgment, the Judge was highly critical of the high level of costs which the parties had incurred in relation to the S.5 application alone. He felt that costs in excess of £74,000 were out of proportion and lamented that the parties had been unable to reach a settlement out of court.

Case Citation: *Weisz v Weisz & Ors* [2019] EWHC 3101 (Fam)

Successful proprietary estoppel claim

In the recent case of *Todd v Parsons*, the Deceased's daughter, Elizabeth, succeeded in bringing a claim for proprietary estoppel in relation to her Deceased mother's house.

In 1980 the Deceased, her sister, Elizabeth (and her then husband), sold their respective properties and bought a farm together as a 'family commune'. They planned to redevelop the farm into three separate dwellings.

Elizabeth and her husband were concerned about giving up their existing home in Bristol, which they had just spent six years refurbishing. They were also worried about difficulties that may arise if any of the parties sold their share in the farm to a new owner outside the family. There was therefore an informal arrangement that the Deceased and her sister would leave their dwellings to Elizabeth and not sell them to anyone else. In return, Elizabeth and her husband promised to be the major investors in the project, in terms of both money and time; a promise which they fulfilled.

The Judge noted that it was not surprising that the arrangement was informal and not legally documented, although it was helpful that it was referred to in contemporaneous documents such as a "*List of Actions*" and that it was reflected in the terms of the Deceased and her sister's Wills, drawn up shortly afterwards.

The Deceased's health deteriorated and in 2008, she was admitted to a care home. Later that year, she stated her intention to change her Will. She told Elizabeth that she did not know what was in her estate and asked for a list of her assets. However, she did say that she knew that her house was to be left to Elizabeth's side of the family.

The Deceased's previous Will left her house to Elizabeth and made provision for her son Michael, from her other assets. The Deceased told the solicitor preparing her later Will, that her son was the poorer of her two children and more deserving. She felt that her current Will was unfair to her son, as the value of her house had increased more than that of her investment portfolio. Under her new Will, she left 70% of her estate to Michael, 25% to Elizabeth and 5% to her granddaughter (Elizabeth's daughter).

The Judge commented that to bring a claim in proprietary estoppel successfully, Elizabeth must show that there was a clear promise by the Deceased, which she relied upon to her detriment. It was held that the Deceased's promise to leave her house to Elizabeth was sufficiently clear and that Elizabeth had relied upon such a promise to her detriment, by selling her home and applying much time and money to the redevelopment of the farm. The Judge directed that the property should be held by the Deceased's estate upon trust for Elizabeth.

Case Citation: *Todd v Parsons & Ors* [2019] EWHC 3366 (Ch)

The future of compulsory mediation

The recent decision by the Court of Appeal in the case of *Lomax v Lomax*, has called into question whether mediation can be made compulsory.

Mediation is a form of alternative dispute resolution, aimed at resolving disputes between parties, through the instruction of an independent mediator. Mediation is currently a voluntary process, widely advocated and encouraged by the courts. In some cases, the courts have imposed costs penalties on parties for an "unreasonable" refusal to mediate but have never gone as far as to compel parties to undertake mediation if they don't want to engage in such a process.

The case of Lomax, although a decision based upon a judge-led process of aiming to resolve disputes, known as, Early Neutral Evaluation ("ENE"), has rather called into question the approach to be taken in mediation. Lomax was a case under the Inheritance (Provision for Family & Dependants Act) 1975, brought by a spouse and resisted by her step-son. The spouse wished to engage ENE to assist the parties in reaching a settlement, a step which was resisted by her step-son. At first instance, although the judge recognised that ENE was clearly appropriate in that case, it was held that ENE could not be compulsory if both parties did not consent. This decision was however appealed and later overturned, the Court of Appeal finding that the consent of the parties, was not required under Civil Procedure Rule 3.1(2)(m).

Although the Lomax decision is a case specifically about compelling parties to engage in ENE, as opposed to mediation, the Court indicated that compulsory mediation was likely to be another form of ADR which the courts would be asked to adjudicate upon in the future. Watch this space for further bulletins on this topic.

Case Citation: *Lomax v Lomax* [2019] EWCA Civ 1467

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