Private Client ~ August 2021

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**Confidentiality of the Adoption Process Prevails in Parenthood Dispute**

The confidentiality of the process by which an adopted child becomes part of a new, permanent and inviolable family unit is, for very good reasons, sacrosanct. A judge made that point in refusing a man's application for his biological parenthood of an adopted child to be formally recognised.

The man was not named as the child's father on her birth certificate but a DNA test had confirmed his paternity. After unsuccessfully opposing her adoption, he sought a judicial declaration that he was the child's parent. If granted, that would permit amendment of the child's birth certificate to record him as her father.

Viewing the application as a staging post on the route to resuming his relationship with the child, he argued that she had a right to know the identity of her biological father and her siblings. With the support of the Attorney General, however, the local authority that had arranged the adoption opposed the application. They argued that, if successful, the application would open a back door that would undermine the inviolability and confidentiality of the adoptive placement.

Dismissing the application, the judge noted that the result of an adoption should be that an adopted child ceases to be the child of their previous parent and becomes, for all purposes, the child of the adopters, that change of status being both final and permanent. The integrity of the adoption process depends on the identity of adoptive parents, the name of the adopted child and the location of the adoptive placement being kept strictly confidential.

Noting that a declaration of parentage would necessarily have to contain the child's adoptive name, the judge concluded that upholding the man's application would be manifestly contrary to public policy. Given the eminently reasonable approach of the child's adoptive parents, the man could have confidence that the child would be made aware of her origins as she grew up.

For advice and guidance on any legal matters surrounding the adoption process, please contact <<CONTACT DETAILS>>.

**Partner Note**

H v R and Others [2021] EWHC 1943 (Fam)

**COVID-19 – Court Authorises Cessation of Father's Life-Sustaining Treatment**

It often falls to judges to address the most dreadful consequences of the COVID-19 pandemic. That was certainly so in a case where the Court of Protection found that keeping a much-loved husband and father on life support would merely serve to prolong his inevitable death.

The man, in his 50s, developed a deep vein thrombosis following a long-haul flight and suffered a heart attack. He was on life support in hospital when he was diagnosed with COVID-19. His condition steadily deteriorated and at least eight unsuccessful attempts had been made to wean him off mechanical ventilation.

Doctors were unanimous in their views that there was no possibility of him making a recovery, so the NHS trust that bore responsibility for his care applied to the Court for authorisation to remove him from life support. If that step were taken, he was expected to die within a matter of minutes.

The trust's application was opposed by the man's wife of 23 years and mother of his three children. A strongly religious woman, she argued that it was for God alone to make life or death decisions. She had a deeply held belief in divine healing and hoped that the power of prayer might return her husband to good health.

Ruling on the matter, the Court gave great weight to the wishes and feelings of the wife, whose religious beliefs were shared by her husband. On the basis of medical evidence, however, the Court had no doubt whatsoever that there was no prospect of the man recovering and that maintaining him on life support would be futile, merely prolonging his suffering and eventual death. The Court ruled that, following a final visit by his family, life-sustaining treatment could be lawfully withdrawn.

Our family law experts are highly experienced in dealing with sensitive cases like this. Contact us for advice.

**Partner Note**

Manchester University Hospitals NHS Foundation Trust v KM and Others [2021] EWCOP 42

**Divorce – Intransigence and Dogmatism Will Only Increase Your Pain**

An intransigent and dogmatic approach to divorce is an infallible way of making the process far more painful and costly. A man who insisted that his ex-wife's financial entitlements should be reduced to reflect the poor quality of their short, childless marriage found that out to his cost.

The couple's marriage lasted not much more than three years, including two periods of separation. Following their divorce, the husband, a very successful businessman, argued that, in the light of the brevity of their childless union, the wife's award should be calculated in accordance with her needs, rather than by application of the equal sharing principle. He offered a lump sum of £600,000. She took the contrary view and sought £5.5 million.

Ruling on the case, the Family Court observed that the extraordinary divide between their financial offers seemed to be in part due to intransigence and dogmatism on both sides. The husband clung to the notion that equal sharing would lead to an unfair result and took every opportunity to rubbish the quality of the marriage. The wife had taken to snooping on the husband's computer and copying his private correspondence, including privileged material.

In ruling that the sharing principle should be applied to wealth built up during the course of the couple's relationship, the Court observed that it was invidious and extremely dangerous for a judge to attempt to evaluate the quality of a marriage. Such an evaluation would almost certainly trigger subconscious discrimination. In the end, judges should proceed on the basis that a marriage is a marriage.

To ask why a marriage might be childless, and whether an absence of offspring denotes a lesser extent of commitment to a relationship, was to attempt to make windows into people's souls and should be avoided at all costs. Childlessness should be banished from any consideration of whether there should be a departure from the sharing principle.

The couple's overall wealth was calculated at £9.2 million, much of which had been built up by the husband prior to the marriage. Applying the sharing principle, the Court ordered him to pay the wife a lump sum of £1,515,000 in order to achieve a clean break. That meant she would exit the marriage with about £2 million, or just over 20 per cent of the overall assets. The legal costs of the hard-fought proceedings came to almost £900,000.

If you are divorcing, a number of issues may arise on which sound legal advice is essential. We can ensure you are expertly advised and represented and can talk you through alternative dispute resolution options, to help mitigate the need for expensive and drawn-out court proceedings.

**Partner Note**

E v L [2021] EWFC 63

**High Court Backs Arbitrator's Decision in £17 Million Divorce Case**

When it comes to sorting out the financial aspects of divorce, arbitration has become increasingly popular as a cost-effective and relatively speedy alternative to formal court proceedings. However, as one case showed, it is vital to remember that an arbitrator's decision is just as binding as if it had been made by a judge.

The case concerned a couple in their 60s who were married for almost 40 years. After they divorced, they reached a broad overall agreement that the husband should receive 52 per cent, and the wife 48 per cent, of matrimonial assets valued at about £17 million. Certain outstanding matters that remained in dispute between them were, however, referred to an arbitrator.

After the arbitrator issued a detailed, 32-page award, the husband mounted a High Court challenge to aspects of his decision. He argued, amongst other things, that the way in which the arbitrator dealt with the capital and running costs associated with the wife's occupation of a property was ambiguous or inconsistent with the terms of the couple's prior agreement.

Ruling on the matter, the Court noted that, when the couple agreed that the arbitrator should determine all issues concerning the division of their assets, they conferred upon him all the powers of a judge. In doing justice between them, he was able to step outside the terms of their agreement and his award could only be challenged if it was legally or factually wrong.

Dismissing the husband's complaints, the Court found that the arbitrator's award was consistent with the overriding objective of doing justice at a reasonable cost. He did his utmost to avoid future litigation between the couple and his intentions clearly emerged from his decision when read as a whole. It was inappropriate to subject his award to minute textual analysis and some of the husband's grounds of challenge had come close to being totally without merit.

If you are dealing with divorce proceedings, we can ensure you are expertly advised and represented.

**Partner Note**

A v A (Arbitration: Guidance) [2021] EWHC 1889 (Fam)

**Homeowner Pays Price for Unauthorised Subterranean Leisure Development**

Judges play a crucial enforcement role in the planning process and those who fail to comply with their orders can expect stern punishment. In one case, a homeowner who breached planning control when he built a huge subterranean leisure facility under his garden received a suspended prison sentence.

The man spent about £1 million constructing the building, which incorporated a sports hall, gym, tenpin bowling alley, casino bar and children's play area. He contended that it was a permitted development, not requiring formal planning permission, but the local authority for the area took the contrary view.

The council issued an enforcement notice requiring him to remove all structures, walls and materials from the site and to restore the ground to its natural level. It asserted that the development created a risk of ground instability in an area of historic mining activity and that above-ground elements of the building had an overbearing impact on their surroundings.

The man appealed against the notice, without success, to a planning inspector who described the building as a very large, bulky structure that was totally out of scale and proportion with others in the area. He said that, in his view, the bland design of above-ground structures was very poor. The man's High Court challenge to the inspector's decision was also rejected.

After he failed to comply with the notice – a task that it was agreed would cost in the region of £750,000 – the council obtained an injunction against him. A judge found that the building amounted to a clear breach of planning control and impacted adversely on neighbouring properties and the character of the landscape.

The judge noted that the man knew before or within a couple of months of starting work on the building that the council took the view that it would not constitute permitted development and was unlikely to be given planning permission. He proceeded with the project at his own risk, in the knowledge that, if the council's view was correct, he might have to demolish the building.

On the basis that he had failed to meet an 18-month deadline for compliance with the injunction, the council launched further proceedings, seeking his committal to prison for contempt of court. After he candidly admitted that, for various reasons, the works required by the injunction had not been completed, the Court imposed a six-week prison sentence, suspended for 12 months.

The suspension was conditional on the man stripping out the interior of the building and disconnecting its electricity and water supplies within 18 weeks. The enforcement notice and the injunction remained in force.

This case serves as a cautionary tale for anyone intending to undertake building work at their property. Expert planning advice is vital – our specialist lawyers can assist you. Contact <<CONTACT DETAILS>>.

**Partner Note**

Forest of Dean District Council v Wildin. Case Number: E90CF030

**Is Your Privacy Being Invaded? A Lawyer Will Enforce Your Rights**

If you feel that your privacy is being invaded, you are far from powerless and expert lawyers can see to it that your rights are respected. The point was powerfully made by the case of a man who claimed to have been subjected to blackmail by a woman with whom he had dealings of a sexual nature.

The man, a private individual with no public profile, said that he had paid the woman for sex on his understanding that she was a sex worker. He alleged that she had since persistently made contact with him, threatening to inform his family of his conduct unless he paid her substantial sums of money.

He launched proceedings against the woman on the basis that her behaviour amounted to harassment and a violation of his human right to respect for his privacy and family life, enshrined in Article 8 of the European Convention on Human Rights. An emergency injunction was swiftly obtained that forbade her from contacting him or divulging his private information.

In extending the injunction until a full trial of the claim could take place, the High Court noted that the woman had been notified of the proceedings but was said to be unwilling to play any active part in them. The man had a strongly arguable case that his entitlement to autonomous control of information concerning his sex life fell squarely within the ambit of Article 8 and that he had a reasonable expectation of privacy as regards his sexual dealings with the woman.

He was likely to succeed in proving at trial that disclosure of the private information concerned would have a serious impact on his personal wellbeing and a destructive effect on his family life. He was in any event entitled not to be subjected to threats of disclosure designed to bring about his payment of significant sums of money. There was a very present risk that the woman would make good on her threat to contact his family and the effects of that would be irreversibly destructive.

He had established a persuasive case that the numerous communications he had received from the woman amounted to harassment, having caused him alarm and distress. If, as alleged, there was a blackmail dimension to her conduct, it was strongly arguable that the harassment was of a sufficiently serious nature to be equivalent to, or to constitute, criminal behaviour.

The Court acknowledged that the injunction impacted on the woman's human right to freedom of expression and left the door open for her to seek variation or discharge of the order. She was, however, warned that breach of the injunction could result in her arrest and punishment for contempt of court. Penalties within the Court's armoury included fines, seizure of assets and, ultimately, imprisonment.

**Partner Note**

GUH v KYT [2021] EWHC 1854 (QB)

**Negligent Education – Boy Let Down by Private School Wins Compensation**

Parents who send their children to private school are entitled to expect that they will receive a reasonable standard of education – and, at the very least, that the school concerned has lawful authority to teach them. In a rare case on point, a couple and their teenage son who, in both those respects, were badly let down received substantial compensation.

The boy was just short of his 15th birthday when his parents moved him to a well-regarded private school to study for his GCSEs. The school was, however, at that time only authorised by the Department for Education to educate pupils up to the age of 14. After the position was made clear to them by an Ofsted inspector, the couple removed their son from the school at the end of his first year there.

The couple launched proceedings against the school's proprietor and headteacher on the basis that they had placed their son at the school in reliance on a false representation. They also alleged that the school had been negligent in failing to provide their son with an adequate standard of education and that his academic achievement had suffered as a result.

In upholding their claims, the High Court found that it had been falsely represented to them that their son could be educated up to GCSE level at the school. On that basis, they reasonably assumed that the school had permission to teach a boy of his age. They were deliberately deceived in that respect and, had they known the truth, would not have sent him to the school.

In also upholding the couple's negligent education claim, the Court found that the school was not prepared generally to teach a GCSE programme when their son joined the pupil body. There were shortcomings in the school's facilities and in the teaching resources required to supervise his learning.

The Court noted that there was no criticism of the school's education of younger pupils and that some parents and children regarded the headteacher and the school as having served them well. It was, however, reasonably foreseeable that the breaches of duty found proved would result in the boy suffering a loss of educational achievement.

The boy's parents were each awarded £2,000 in compensation, and the boy £5,000, to reflect the distress they endured as a result of the false representation. In the event, he had not attained six GCSEs, had been unable to take his A Levels and was not going to university. That significant failure in educational achievement, the Court ruled, merited a further award of £20,000.

If you are concerned that your child has been subject to negligence in regards to their education provision, contact us for advice.

**Partner Note**

Vogel and Others v Remus White Ltd and Another [2021] EWHC 1755 (QB)

**Placing a Property in Joint Names? Do You Understand the Consequences?**

Loved ones who place properties in their joint names may not give any thought to the legal consequences of doing so. However, relationships can sour and, as a Court of Appeal ruling showed, it is vital at the outset to seek a lawyer's help in precisely defining the nature of your respective interests.

The case concerned a father and son who were registered owners of a property. The son was 19 when the property was purchased and he made no contribution to either the purchase price or the mortgage repayments. The father said that the son, who was working and earning, was only included on the title deeds in order to make it possible to obtain a mortgage advance.

The dispute that subsequently developed between them hinged on a manuscript 'X' that had been inserted in a box on a Land Registry form at the time of the purchase. It indicated that father and son held the property on trust for themselves as tenants in common in equal shares.

Following a hearing, a judge found that neither of them ever intended that they should be joint beneficial owners of the property. He ruled that the father was the property's sole beneficial owner and that the insertion of the 'X' was clearly a mistake. The son's first appeal against that outcome was rejected by a more senior judge, who directed that the form should be rectified so as to remove the 'X'.

Upholding the son's second appeal, however, the Court noted that it must be fairly common for family members who acquire property jointly not to discuss openly how the beneficial interest is to be held. There was no such discussion between father and son at the time of the property's purchase and they simply gave no thought to the matter.

In those circumstances, it had not been established that their common intention was that the property should be held beneficially by the father alone. It could also not be shown that the insertion of the 'X' represented a mutual mistake. There was thus no basis on which the power to rectify the form could be exercised.

The Court noted that the merits of the case were not all one way in that the son had been lumbered with legal liability under the mortgage that had prevented him from buying a house of his own. The dispute was one that cried out for mediation and the Court expressed the hope that a sensible solution could still be found.

It is vital to have legal representation in circumstances such as this. For expert advice, contact <<CONTACT DETAILS>>.

**Partner Note**

Ralph v Ralph [2021] EWCA Civ 1106

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