Tax, Trust and Probate ~ January 2023

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**Bequests to Disabled Relatives – Professional Advice is Essential**

Leaving money to a disabled relative in your will is obviously a worthy act. As a High Court ruling showed, however, in the absence of careful drafting and professional advice, your generosity may have serious and unforeseen legal implications.

The case concerned a disabled young man who lacked capacity to make important decisions for himself. By his will, his mother's cousin bequeathed him a six-figure sum. A difficulty arose, however, because the majority of his income was in the form of over £50,000 a year in means-tested benefits. His inheritance of such a large capital sum threatened his entitlement to those benefits.

His father launched proceedings seeking judicial permission to place his inheritance in a disabled person's trust. That, it was hoped, would enable the retention of his full benefits entitlement. In the absence of such a trust, it was said that he would, in effect, receive no practical benefit from his inheritance.

Ruling on the matter, the Court was not persuaded that the creation of a trust would better reflect the relative's intentions. He had been informed of the possibility of placing the money in trust prior to his death, but had not done so. He was happy that the money should be managed by the man's parents for his benefit and there was no evidence that he was concerned with preserving benefits entitlements.

The Court did not regard a bequest which has the effect of taking a person out of dependence on means-tested benefits as a waste of time. Even if such a gift conferred no actual financial benefit on the beneficiary, it still deserved to be described as generous.

Rejecting the father's application, the Court was not in any event satisfied that the proposed trust would have the desired effect. There was a clear risk that the relevant local authority and the Department for Work and Pensions would take the view that any such trust would be illegitimate in that its significant operative purpose would be to preserve the man's means-tested benefits. In that event, the trust might have to be unwound, creating a risk of negative tax consequences.

The position would have been different had the relative's will provided for the money to be placed in trust. However, the Court noted that its decision had to be based on what actually happened, rather than what might have happened. There were other disadvantages to the creation of a trust, not least that it would take the only capital available to the man outside the oversight of the Office of the Public Guardian. The Court was, overall, unpersuaded that placing the money in trust would be in the man's best interests.

For advice on making sure your estate will be dealt with fairly and efficiently, to avoid situations such as this arising, contact us.

**Partner Note**

*F v R [2022] EWCOP 49*

**Cancer Sufferer's Belated Will Triggers Bitter Family Inheritance Dispute**

Those who delay making a will until they are at death's door create a very real risk of conflict amongst their loved ones after they are gone. That was sadly so in the case of an elderly man who was in hospital, suffering from advanced bladder cancer, when he finally got round to instructing a solicitor.

By his will, which he signed less than two weeks before he died, the man left all that he owned to his wife. The document's validity was challenged in court by his eldest son, who asserted that he was so confused at the time that he lacked the mental capacity required to make a legally enforceable will.

Ruling on the matter, the High Court noted that medical records in the days before he executed the will referred to him as confused and agitated. No medical opinion had been sought in relation to his capacity and understanding before he signed the document. One of his daughters testified that he had lost his mental acumen and that, in her opinion, he was in no fit state to make a will.

On the other hand, other members of his family who visited him in hospital had no doubt about his capacity. Expert evidence indicated that a change in medication had brought about a marked improvement in his condition by the time he signed the will. His accountant, who served as one of the witnesses to the will, had no concern at all that he was not fully aware of what he was doing.

The decisive evidence, however, came from the solicitor who drafted the will. He had known the man for over 40 years and had discussed the contents and implications of the will privately with him before he signed it. The document was read to him twice before he stated that it was exactly what he wanted. The Court rejected any suggestion that the solicitor had conducted himself unprofessionally.

Whilst the man was clearly unwell, the Court was entirely persuaded by the solicitor's evidence that he had the required mental capacity to make a valid will. Rejecting the daughter's evidence to the contrary, it found that she was motivated solely by the prospect of personal financial gain and not by any desire to tell the truth.

In upholding the will's validity and admitting it to proof in solemn form, the Court was satisfied that the man knew and approved the contents of the document. His son's further allegation that he had been subjected to undue influence was hopelessly misconceived in that it was supported by not one shred of evidence.

We can ensure that your wishes are made clear in an expertly drafted will. Contact us for advice.

**Partner Note**

*McQuaid v McQuaid and Another [2022] NICh 18*

**Landowner Relieved of £98,000 Stamp Duty Bill in Country House Appeal**

Large houses set amidst rolling acres are an abiding feature of English rural life – but should such properties necessarily be viewed as wholly residential? In answering that question in a landowner's favour, the First-tier Tribunal (FTT) relieved him of a substantial Stamp Duty Land Tax (SDLT) demand.

The landowner and his wife purchased a house and 39 acres of land for £2.5 million. He paid £114,500 in SDLT on the transaction on the basis that the property was in mixed use. HM Revenue and Customs (HMRC), however, took the view that the property was entirely residential and assessed him for an additional £98,000 in SDLT.

Upholding the landowner's challenge to that assessment, the FTT noted that 20 acres of the land were fenced off, invisible from the house and leased out for grazing sheep. That arrangement long pre-dated the couple's purchase of the property. A further 8.5 acres of woodland were managed by the Woodland Trust.

It was somewhat hyperbolic to describe the house as surrounded by its own rolling pasture and indigenous woodland. It was, in truth, a barn conversion, not a large manor house at the heart of a traditional rural estate. Given its character, it was more than adequately served by its 12 adjoining acres, which included a landscaped garden, a lake and various outhouses.

The FTT found that the land occupied under the grazing lease and by the Woodland Trust did not form part of the garden or grounds of the house as defined by Section 116 of the Finance Act 2003. It was, therefore, wrong to treat them as residential property for the purposes of SDLT.

It is important to source specialist legal advice if a dispute with HMRC arises. Our expert team can assist.

**Partner Note**

*Withers v The Commissioners for Her Majesty's Revenue and Customs [2022] UKFTT 433 (TC)*

**You Are Obliged Reasonably to Provide for Your Dependants in Your Will – No More**

When making a will, it is vital to remember your obligations to family members and others who depend upon you financially. As a High Court ruling showed, however, your duty is to make reasonable provision for them – no more.

The case concerned a matriarch who died just short of her 100th birthday. By her will, she directed the sale of her home, which was worth about £875,000. She instructed that the proceeds of sale should be split into six equal parts before being divided, in various proportions, between her six children and six grandchildren.

Her eldest daughter was apportioned 70 per cent of one of the parts. She was also bequeathed one sixth of the modest residue of her mother's estate. Her inheritance was, overall, worth about £109,000. However, she asserted that the will did not make reasonable provision for her. She launched proceedings under the Inheritance (Provision for Family and Dependants) Act 1975, seeking an increased share of her mother's estate.

In rejecting her claim, however, the Court found her to be an unsatisfactory witness. Her evidence contained substantially exaggerated statements about the level of care she had provided to her mother in her old age. Having initially asserted that she gave up work at her mother's request in order to look after her, she subsequently accepted that she did so voluntarily for her own reasons.

Just because her mother had unwillingly provided her with rent-free accommodation for a number of years did not mean that she was under an obligation to do so. Her mother was not responsible for meeting her needs, whether by providing her with somewhere to live or otherwise. She had no greater obligations or responsibilities towards her daughter than towards any of her other children and their families.

For advice regarding inheritance law, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Lettice v Lettice and Others [2022] EWHC 3013 (Ch)*

**In Brief**

**New Digital Support Service Aims to Remove Barriers for HMCTS Users**

HM Courts & Tribunals Service (HMCTS) has launched a free national digital support service to help users who cannot get online, including those who cannot access the internet or a computer.

The digital support function is being offered on a range of HMCTS' online services, including applications for probate of an estate.

If users contact the Courts and Tribunals Service Centre and need help to complete a form, service centre staff will refer them to the digital support service.

HMCTS is partnering with We Are Digital, a social impact company, to deliver the new support offering.

Further information can be found at <https://www.gov.uk/government/news/helping-our-online-users-with-a-new-national-digital-support-service>

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