Private Client ~ May 2023

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**Adopted Pensioner's Quest to Find Her Birth Parents Finally Bears Legal Fruit**

Many adopted people feel driven to embark on long and demanding quests to find their birth parents. In one case, decades of painstaking research paid off when a woman in her late 70s was granted a court order that completed her sense of identity.

The woman was placed with adoptive parents within days of her birth in 1945. The couple told her at an early age that she was adopted and that her birth parents were each married to someone else, making it impossible for her to remain with them. The woman grew to adulthood, left home, married and had children and grandchildren of her own.

She was in middle age when she began her hunt for her birth parents. She had little success in the early days, but the advent of the internet changed all that. With her son's help, she found out her mother's name and that she had migrated to Australia soon after the Second World War. She had since engaged positively with members of her mother's large family and had travelled to Australia to meet them.

Identifying her birth father, who, together with her birth mother and adoptive parents, was long-since deceased, posed a more difficult challenge. Via a genealogical website, she obtained a DNA match with a third cousin who put her in touch with other members of the family. The niece and nephew of the man she believed to be her birth father consented to DNA testing, which confirmed a 98.32 per cent probability that they were blood related.

In granting the woman a declaration of parentage, the High Court found that the man was, on the balance of probabilities, her birth father. For her own sake and that of her children and grandchildren, it was important to her to establish a sense of familial identity. To her great joy, she had formed a bond with members of her birth father's family with whom she was in regular contact. The declaration opened the way for her to seek the man's formal recognition as her father on her birth certificate.

We can advise you on all aspects of family law. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*In the Matter of E [2022] EWFC 180*

**Are You a Victim of Online Harassment? You Don't Have to Put Up With It**

In an era of easy, internet-based mass communication, reputations can, without a shred of justification, be destroyed at the click of a button. As a High Court case showed, however, victims of such behaviour can, with expert legal assistance, achieve both vindication and just compensation.

The case concerned the founder of a spiritual group who was the target of videos posted online and emails sent to recipients who possibly numbered in the thousands. They contained allegations of immoral and criminal conduct against him that were of the utmost gravity.

The publications caused great distress to both the founder and his family. Despite his extensive efforts to have the videos removed from the internet, they continued to surface from time to time, resulting in an exodus of members from his organisation. Some of the videos had received tens of thousands of views and he found himself constantly having to explain that the allegations were false.

He issued proceedings against two men who were said to be responsible for the publications, alleging defamation, harassment, breach of data protection and misuse of private information. Their defences to the claim were later struck out by a judge due to their failure to comply with court orders and judgment was entered against them.

One of them agreed to settle the claim against him by paying a global sum of more than £130,000 in damages and costs. He publicly apologised to the founder and accepted that the allegations were untrue, were seriously harmful and included some intrusive speculation into the founder's private life. The proceedings continued against the other man, however.

In ordering the other man to pay £35,000 in damages, plus legal costs, the Court found that it was a case of serious online harassment. The award reflected the absence of an apology and was designed to vindicate the founder's reputation. An injunction was issued which, amongst other things, forbade him from making any further publications concerning the founder.

If you have been on the receiving end of online harassment, contact our expert team to establish whether you can pursue compensatory legal action.

**Partner Note**

*Parkes v Hall and Another [2023] EWHC 794 (KB)*

**Divorce – Serious Wrongdoing Can Affect Financial Awards**

When it comes to dealing with the financial aspects of divorce, the question of where blame lies for marital breakdown is, from a judicial point of view, very often neither here nor there. However, as one case showed, there are occasions when a spouse's behaviour is so appalling that it becomes relevant to the fair division of assets.

The case concerned a former public servant who received a long prison sentence for raping and stalking his wife. They were already separated at the time of the offences and, following his arrest, she petitioned for divorce. Despite showing great stoicism, she remained deeply traumatised by his crimes and felt that she could not move forward with her life until their divorce was finalised.

By far the largest asset yielded by the long marriage was the husband's occupational pension, which had a cash equivalent value of over £600,000. In arguing that public policy demanded that the wife, who was in poor health and approaching retirement age, should have the lion's share of that sum, her legal team asserted that the husband would otherwise be benefiting from his crimes.

Ruling on the matter, a family judge noted that the courts usually refrain from taking a punitive or confiscatory approach to financial relief proceedings. In a case of such extreme misconduct, however, it was right to give much higher priority to the wife's financial needs than those of the husband, in that the difficult situation in which she found herself was, in a very real sense, his fault.

Giving precedence to the wife, the judge's approach was to consider the husband's financial position only after he was satisfied that her needs had been met. He ruled that she should have about 85 per cent of relevant capital assets, including the whole of the former matrimonial home, and about 66 per cent of their combined pensions. The significant disparity was, the judge found, well justified by the wife's needs and the impact of the husband's conduct.

We can advise you on all aspects of divorce law. Contact **<<CONTACT DETAILS>>**.

**Partner Note**

*S v S [2022] EWFC 176*

**High Court Gives Guidance on Emergency Non-Molestation Orders**

The upsetting breakdown of a relationship may be accompanied by angry and hurtful phone calls or digital messaging. However, as a guideline High Court ruling showed, such conduct may not be enough to justify the grant of an emergency non-molestation order.

The case concerned a year-long relationship between a man and a woman who also worked together. She accepted that he had not been verbally or physically abusive towards her, but alleged that he had engaged in various forms of controlling and manipulative behaviour, thereby putting her in fear of him.

After she terminated the relationship via WhatsApp, he continued to telephone and message her in a way that she found distressing. On the advice of the police, she sought an emergency non-molestation order against him. Following a hearing at which he was not represented, however, her application was dismissed.

Ruling on her challenge to that outcome, the Court noted that the strain placed on relationships by the COVID-19 pandemic had led to significant growth in the number of applications for non-molestation orders. In many parts of the country, the number of such applications had not fallen back to pre-pandemic levels.

The Court noted that the concept of molestation does not necessarily imply the use of violence or threats of violence. Telephone calls or digital messaging may amount to molestation if they descend into harassment that causes alarm or distress. The law focuses on the subjective impact of such conduct on alleged victims, who are not required to prove a positive intent to molest.

Rejecting the appeal, however, the Court observed that the end of a relationship is often accompanied by significant upset. The man had probably sent an excessive number of texts and emails, at least one of which was angry and hurt. They were, however, in no sense threatening or controlling and he had ceased such conduct some time prior to the woman's application. Overall, the facts of the case provided no proper basis for judicial intervention.

Giving guidance for the future, the Court had no doubt that there are far too many emergency non-molestation orders sought at one-sided hearings where there is no reasonable basis for taking such a course. Such orders should not be granted by default but only in exceptional circumstances where there is a significant risk of immediate harm.

**Partner Note**

*DS v AC [2023] EWFC 46*

**Homeless Mum Offered Accommodation 160 Miles from London Wins Appeal**

Faced with an extreme shortage of social housing, London boroughs frequently place homeless people to whom they owe a duty in accommodation many miles from the capital. In an important decision, the Court of Appeal considered the lawfulness of such arrangements.

A borough owed a duty to rehouse a homeless mother of three. It offered to accommodate her in a three-bedroom house in Stoke-on-Trent, more than 160 miles from London. In declining that offer, she pointed out, amongst other things, that her family roots and responsibilities were in London and that her children were well settled at a local primary school.

The borough, however, took the view that the offer was a reasonable one and that, by making it, it had discharged the duty it owed her under Section 193(2) of the Housing Act 1996. On that basis, she was entitled to receive no further offer. Her challenge to that decision was later rejected by a judge.

Appealing against that outcome, she argued that it simply defied logic that the borough could not secure accommodation for the family closer than about three hours away from its area. Over a period of two years, the borough was alleged to have rehoused 121 homeless households in Stoke-on-Trent. That, it was contended, was evidence of an unlawful policy being operated.

Ruling on the matter, the Court noted that one would need to be a hermit to be unaware of the acute shortage of housing, particularly affordable housing, in the capital. In line with its own policy, however, it was incumbent on the borough to accommodate homeless households to whom it owed a duty as close as is reasonably practicable to its administrative area.

There was nothing wrong with that policy. However, in upholding the appeal, the Court noted that there was a dearth of evidence to show that it had been followed in the mother's case and common sense rather suggested that it had not been. The borough had provided no sufficient explanation as to why no suitable property was available any closer to its area than Stoke-on-Trent.

If you are involved in an accommodation dispute with a local authority and need legal guidance, contact us for advice.

**Partner Note**

*Zaman v London Borough of Waltham Forest [2023] EWCA Civ 322*

**Neighbours' Disputes – Negotiate Now or Pay a High Price Later**

Many neighbours' disputes may, at least to an outsider, appear trifling. However, as a High Court ruling showed, they matter very much to those involved and, in the absence of amicable negotiation, they can very easily become ruinously expensive.

A landowner asserted that his neighbours' right of way over a track that crossed his land was limited to a width of 2.15 metres. The neighbours, however, asserted that the correct figure was 2.5 metres. The dispute blew up into full-scale litigation after the landowner erected steel bollards at each end of the track that only permitted vehicles the width of a quad bike to pass by.

Following a trial, the neighbours succeeded on the principal issue concerning the track's width. Although certain other issues were decided against them, the judge ordered the landowner to pay 75 per cent of their legal costs. Both sides sought to challenge aspects of the judge's ruling but, after detecting no legal flaw in his conclusions, the Court rejected their appeals.

The Court noted that the neighbours had incurred legal costs of £427,000 in fighting the case, not including the costs of the appeal. The landowner's costs budget was £218,000, but his bill was estimated to be up to 10 per cent higher than that. Emphasising that the dispute had been conducted in an entirely disproportionate way, at entirely disproportionate cost, the Court hoped that any further disagreements arising could be resolved in a sensible and amicable fashion, without further expense.

Situations such as this can be avoided, with the right legal advisors in place. Contact us for expert guidance on right-of-way disputes.

**Partner Note**

*Lamport and Others v Jones [2023] EWHC 667 (Ch)*

**The Validity of a Pre-Nuptial Agreement Often Depends on Top-Quality Legal Advice**

Pre-nuptial agreements (PNAs) which are not entered into freely or which have unfair results will generally not be worth the paper they are written on. However, as a High Court case showed, judges are far more likely to treat them as valid if they are signed after taking independent legal advice.

The case concerned a PNA executed by a couple about three months before they married. The husband, an extremely successful financier, had a net worth of about £32.5 million at the time and had continued to prosper mightily since. The wife had not much more than £60,000 in assets. Their marriage lasted about 14 years, yielding two children, before the wife petitioned for divorce.

In accordance with the terms of the PNA, the husband offered the wife £11.75 million with a view to achieving a clean break. That represented a housing fund of £4.75 million and income-producing capital of £7 million. In contending for more extensive provision, however, the wife boldly argued that the PNA should be wholly ignored.

Ruling on the matter, the Court noted that, prior to signing the PNA, the couple had each received independent legal advice from highly regarded family solicitors. The equal sharing principle was not ignored and the PNA, which also made very generous provision for child maintenance, would have been torn up had the marriage lasted 25 years.

The Court acknowledged that the couple had had what was described as 'the mother of all arguments' prior to signing the PNA. However, it was a two-way argument and they had time to cool off prior to signing the document. The husband had made it plain that there would be no marriage without a PNA, but that was commonplace. Overall, the Court was not satisfied that the wife had been placed under undue pressure to enter into the PNA.

In reaching the very clear conclusion that the PNA could not be ignored, the Court found that a fair deal had been struck. It certainly did not represent a capitulation by the wife. The ruling meant that the wife and children would be provided for in accordance with the husband's offer.

Giving guidance for the future, the Court noted that litigants should be aware that it is a significant step to instruct lawyers to prepare a PNA. Such agreements are intended to bring certainty and minimise the risk of subsequent dispute. In the absence of something fundamental that undermines their validity, judges are highly likely to give them full effect.

For expert advice regarding PNAs, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*MN v AN [2023] EWHC 613 (Fam)*

**What Constitutes the 'Grounds' of a Large House? Guideline Tax Ruling**

Do the 'grounds' of a large house extend to areas that are difficult to access and that provide no practical benefit to the property's owner? The Upper Tribunal (UT) addressed that important issue in the context of a Stamp Duty Land Tax (SDLT) appeal.

The case concerned a country house that, together with a number of outbuildings and 15.5 acres of land, had been purchased for £2.8 million. Approximately two of those acres consisted of ancient, dense and heavily protected woodland, sloping steeply down to a river bank.

The estate's owner contended that the woodland was not residential in that it did not form part of the property's grounds, within the meaning of Section 116(1)(b) of the Finance Act 2003. On that basis, it asserted that the property was in mixed use and that SDLT was thus payable at a lower rate.

Had that argument prevailed, the owner's SDLT liability would have been reduced by more than £200,000. HM Revenue and Customs (HMRC), however, took a contrary view that the whole of the estate, including the woodland, was residential in nature. The owner's initial challenge to that decision was rejected by the First-tier Tribunal (FTT).

Ruling on the owner's appeal against that outcome, the UT identified a number of legal and procedural flaws in the FTT's decision, which was set aside. Rather than remitting the matter for reconsideration by the FTT, however, it elected to remake the decision itself.

Although the woodland was crossed by a public footpath, the owner pointed out that it was otherwise inaccessible from the house, save with the assistance of industrial machinery. The owner could make no greater use of it than any member of the public and it could not be commercially exploited in that it was covered by a tree preservation order. It could not be used for walking, picnicking or other 'residential' purposes and it provided no benefit to the owner.

The UT noted that the evaluation it had to perform was inevitably impressionistic and not an exact science. The woodland fell within the legal title of the property and provided some measure of privacy and security to the house, from which it was not inordinately distant. The fact that it was not in agricultural or commercial use was a factor that also weighed in favour of HMRC. Overall, the UT was satisfied that the woodland formed part of the property's grounds.

We can advise you on all aspects of tax law, including SDLT. Contact **<<CONTACT DETAILS>>**.

**Partner Note**

*The How Development 1 Ltd v The Commissioners for His Majesty's Revenue and Customs [2023] UKUT 84 (TCC)*

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