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**Declaration of Death Opens Way for Administration of Missing Teacher's Estate**

When a person goes missing without trace, the fact that their assets are left in limbo often adds to the agony suffered by their loved ones. However, as a High Court ruling in a very sad case showed, such impasses can if necessary be broken by a judicial declaration of death.

The case concerned a teacher and keen outdoorsman in his 50s who never returned home from a walking holiday to Turkey. He told fellow guests at the hotel where he was staying that he was going for a hike to a tourist spot and was never seen again. Despite a missing person publicity campaign and five search parties, using army personnel, drones, helicopters and dogs, no trace of him had been found.

About four years after his disappearance, his sister and closest living relative applied to the Court under the Presumption of Death Act 2013. In the absence of official confirmation of his death, there could neither be closure for her and her family nor could his estate, which included a £350,000 property, be administered.

Ruling on the matter, the Court noted that there was no indication whatsoever that he was depressed or that there was anything wrong in his life. His sister had done all in her power to find him, travelling to Turkey twice, without any success. His passport and personal items were found in his hotel room, strongly indicating that he had not deliberately disappeared with a view to starting a new life. Calls to his mobile phone went to voicemail until the battery ran out.

It was surprising that no body had been found, but he was a responsible man and there was absolutely no evidence that he intended to disappear without telling his loving sister, her husband and their children. Everything suggested that he went out for a walk, intending to return to the hotel that evening.

The Court was satisfied that something happened on the day of his disappearance that caused his death. It was impossible to know whether he tripped and fell into a crevice on rough terrain or suffered a heart attack or stroke. The Court made a declaration that he died seven days after the date on which he went missing.

For advice regarding missing persons and declarations of death, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Re: David Horton Cann [2023] EWHC 1006 (Fam)*

**Family Judge's Challenging Interventions Rendered Care Hearing Unfair**

Judges are not expected to sit placidly on the bench, silently listening to barristers' arguments. However, as a Court of Appeal ruling in a case of critical importance to the future of two children showed, there comes a point where excessive judicial interventions may render a hearing unfair.

The children, aged 13 and 10, had poor school attendance records and came from a home blighted by domestic violence and substance abuse. In care proceedings, the local authority proposed that they should remain in their mother's care under the aegis of a supervision order. Following a hearing, however, a judge preferred their father's proposal, which was backed by their court-appointed guardian towards the end of the hearing, that they should be removed into temporary foster care.

Upholding the mother's challenge to that outcome, the Court found that the judge's interventions during her evidence provided a clear example of judicial descent into the arena. By intervening on such a scale and in such a challenging manner, the judge ran the risk of hampering her own ability properly to evaluate and weigh the evidence so as to impair her judgment, thereby rendering the hearing unfair.

The degree of judicial intervention whilst the mother's barrister was making her final submissions also exceeded what was reasonable or fair. The judge's challenges to her arguments went far beyond testing her case. The Court was left with the strong impression that the mother's barrister was unable to advance all the points that she wished to make on the mother's behalf. She was certainly prevented from putting her case forward in the way she intended.

The Court observed that the need to avoid excessive judicial interruptions was particularly important in that the issues in the case were, on the face of it, finely balanced and the future care of two very troubled children was at stake. The case was remitted for rehearing by a different family judge. In the meantime, the children would remain in their mother's care under local authority supervision.

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

**Partner Note**

*K and L (Children: Fairness of Hearing) [2023] EWCA Civ 686*

**Local Authority Taken to Task for 'Dismal' Treatment of Homeless Family**

Homeless applicants for public housing have a right to expect more than unthinking and mechanistic responses from local authorities. In powerfully making that point, a judge described aspects of a council's handling of a young family's case as nothing short of dismal.

The case concerned a refugee mother of three children, aged between 11 and three, who were well settled in a school located in a London borough. When facing eviction through no fault of her own, she applied to the council for accommodation under the Housing Act 1996. The council acknowledged that she was homeless and entitled to assistance.

Thereafter, however, the council moved the family from hotel to hotel, all of which were between one and two and a half hours away from the children's school by public transport. None of them had laundry or cooking facilities and, during one four-month period, they were relocated no fewer than eight times.

The mother was eventually offered three-bedroom accommodation in Peterborough. When she rejected that offer because of its distance from the children's school, the council took the view that it had discharged its duty under the Act and that she was entitled to receive no further offers. The school's headmaster wrote to the council on the family's behalf but received no response.

After the mother lodged judicial review proceedings, the judge found that the council's communications with her during the early stages of her homelessness were entirely inadequate. It failed to take reasonable steps to identify or assess her potential housing needs or to determine what type of accommodation would be suitable for the family. There was no evidence that it made any inquiries as to the availability of accommodation closer to the children's school.

In making repeated offers of hotel accommodation without conducting appropriate reviews, the council's conduct was dismal. The mother's request to be accommodated closer to the children's school was, on the face of it, reasonable. However, she was merely instructed to relocate from one hotel to another, without further assessment or inquiry. In some instances, she was required to move under threat that the council's duty to house her under the Act would otherwise be terminated.

In upholding her claim, the judge found that hotel accommodation could not rationally have been considered suitable. In many cases, the hotels offered were an excessive distance from the children's school and the absence of food preparation facilities meant that the family had to subsist on expensive fast-food outlets as the mother's savings dwindled. The offer of accommodation in Peterborough was also irrational in that it would plainly have required the children to change schools during the academic year.

The judge acknowledged the pressure under which housing departments in London operate. However, the evidence disclosed an unthinking, mechanistic series of decisions on the council's part. It could be inferred that the family had been repeatedly moved to whatever happened to be the least expensive bed and breakfast facility that the council could secure from private providers.

If you are involved in a housing dispute with a local authority, contact our expert team for advice.

**Partner Note**

*R on the Application of UO v London Borough of Redbridge [2023] EWHC 1355 (Admin)*

**One Good Reason Why Professional Conveyancing is Always Required**

One good reason why professional conveyancing is always required is that lurking in the title deeds of a great many properties are clauses that may heavily restrict their development or any future use to which they can be put. One such clause came under close analysis in a High Court case.

A couple had obtained planning permission to demolish their cottage and replace it with a substantially larger home. Their neighbour, however, pointed to a restrictive covenant in the cottage's title deeds which dated back to 1958, long before the couple purchased the property. The covenant, for all time, forbade erection of any additional building on the relevant land.

The neighbour contended that, on a true interpretation of the covenant, it precluded the couple from erecting any building on the land, whether in addition to or in replacement of the existing cottage. On that basis, she asserted that the planning permission could not be lawfully implemented.

For their part the couple argued that the covenant did not restrict construction of a building to replace the existing cottage but extended only to the erection of buildings additional to the cottage. The neighbour's reading of the covenant would have the absurd result that they would never be permitted to replace the cottage even if it burnt down or reached the end of its working life.

Ruling on the matter, the Court noted that the law will not rewrite imprudent or ill-advised agreements that have been voluntarily entered into. The couple were bound by the covenant notwithstanding that it was not entered into by them but by a previous owner of the cottage. The first step in interpreting the covenant was to consider the natural meaning of the words used. Surrounding circumstances and commercial common sense were, however, also relevant.

Rejecting the neighbour's interpretation of the covenant, the Court found it highly unlikely that the former owner who signed up to it in 1958 would have agreed to such a major interference with his rights in respect of his own land. There was a clear expectation that, had such extensive interference been intended, explicit and specific words would have been used.

Preferring the couple's arguments, the Court found that the natural meaning of the covenant, read in context, was that the former owner promised no more than that he would erect on the land no buildings in addition to – in the sense of 'as well as' – the existing cottage. It was not intended to preclude either him or his successors in title from replacing the cottage by way of a substitute building.

In concluding that the covenant was no impediment to the couple's implementation of the planning permission, the Court also found that it did not prevent alteration or extension of the cottage nor did it place limits on the scale of any replacement building. The Court emphasised that its conclusion did no more than reflect the proper construction of the covenant, having regard to its language and context.

We can advise you on planning law to help avoid protracted disputes with neighbours. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*McDonagh and Another v Reeve [2023] EWHC 933 (Ch)*

**Pre- and Post-Marital Agreements Given Full Weight in Big Money Divorce**

Couples who enter into pre- or post-marital agreements with their eyes open and with the benefit of legal advice can expect to be bound by them. The High Court made that point in a so-called 'big money' divorce case in which an extremely wealthy woman's assets dwarfed those of her ex-husband.

Before their relatively brief marriage, the wife's net assets were already valued at about £50 million. The husband's net assets were worth about £225,000, plus a small pension and modest employment income. The wife's wealth, which was entirely derived from her family, later swelled to £250 million.

They entered into pre- and post-marital agreements by which the wife undertook, amongst other things, that in the event of their relationship permanently breaking down, she would meet the husband's reasonable housing needs until any children of the marriage reached adulthood or completed full-time education.

The husband agreed that he would have no claim against the wife's assets and that she would have no obligation to pay him maintenance. The agreements specifically stated that the husband's reasonable needs were met by their terms and that the principle of asset sharing should not apply in the event of divorce.

Ruling on the financial aspects of their divorce, the Court noted that the agreements were in entirely conventional terms and contained a warning that the couple should not sign them unless they intended to be bound by their terms. The husband could have been under no illusions as to the extent of the wife's wealth and had received independent advice as to the effect of the agreements on his rights.

It was not a long marriage and the couple could have done no more to make clear their intentions as to what should happen in the event of separation in terms of their assets and the issue of spousal maintenance. In making financial orders designed to meet the husband's reasonable housing and income needs, the Court ruled that the agreements should carry full weight and were largely decisive as to the outcome.

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

**Partner Note**

*Backstrom v Wennberg [2023] EWFC 79*

**Rent-Free Occupation for Life – The Law Will Enforce a Binding Promise**

If you make a promise to someone who relies on it to their detriment, then it must be kept. The County Court powerfully made that point in coming to the aid of a woman whose son and daughter-in-law gave her their word that she could live in a property they owned, rent free and for the rest of her life.

The woman moved into a house that her son and daughter-in-law had recently purchased and that was next door to their own. There was no dispute that the couple promised her that she could occupy the house on a rent-free basis for life. She remained living there for about 10 years but, after her relationship with the couple broke down, she moved to a property owned by her daughter.

After she launched proceedings against the couple, the Court found it more likely than not that she had intended to return to the house in due course. Only having moved out temporarily, she remained in occupation of the property at all relevant times. The couple had probably convinced themselves that she had moved out permanently but were no doubt influenced by a strong desire to have it so.

The couple were, in effect, her landlords and, in taking possession of the house in her absence, they had deprived her of her right of occupation, contrary to Section 27 of the Housing Act 1988. Under that head, they were ordered to pay her £148,000 in damages, that sum representing the difference between the property's value with vacant possession and its value with her in occupation of it for life.

In reliance on the couple's promise, she had spent £73,000 on renovating and redecorating the house. Awarding her further compensation in that sum, the Court was satisfied that she would not have invested money in the property had she not been given a binding assurance that she could occupy it for life at no rent. The couple were, in total, ordered to pay her £221,000.

It is vital to seek legal advice before entering into any kind of financial agreement, even with family members. Contact us for expert guidance.

**Partner Note**

*Wilson v Wilson and Another [2023] EW Misc 5 (CC)*

**Undue Influence – Vulnerable Mother 'Coerced' into Making Will**

Making a valid will requires an exercise of independent decision-making, free from the undue influence of others. The High Court powerfully made that point in finding that a daughter coerced her ailing mother into bequeathing everything to her.

The mother was aged 82 when she made her one and only will, leaving her home and everything else she owned to one of her four daughters. She had by then been diagnosed with dementia and had suffered a suspected stroke. She died three months after signing the document. A legal challenge to the will's validity was later brought by two of her disinherited daughters and four of her grandchildren.

Ruling on the matter, the Court noted that the circumstances were suspicious. No solicitor was involved in the preparation and execution of the will and the mother was not medically examined at the time. The Court was not, however, satisfied on the evidence either that she lacked the mental capacity required to make a valid will or that she did not know and approve of the document's contents.

In nevertheless ruling the will invalid, the Court found that the facts pointed inevitably to a conclusion that the daughter who became her sole beneficiary had coerced her into making it. She may have believed that she was simply persuading her mother to do the right thing, but the undue influence that she brought to bear went far beyond persuasion.

The mother was very vulnerable, both physically and mentally, when she signed the will. She had been devastated by the recent death of one of her daughters and was probably still grieving deeply. After moving in with her, the daughter who benefited under the will had taken steps to isolate her from other members of the family. The daughter's assertion that she had nothing to do with making the will was inherently unlikely.

The Court found that the mother signed the will not as a free agent but because her volition had been overcome by her daughter's undue influence. The decision meant that she died without making a valid will and that her estate would be distributed amongst her next of kin in accordance with intestacy rules.

For advice on inheritance disputes, contact our expert team.

**Partner Note**

*Jones and Others v Jones [2023] EWHC 1457 (Ch)*

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