Tax, Trust and Probate ~ September 2023

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This is Why You Should Never Make a Will Without Taking Legal Advice

**Even Blinkered, Difficult and Ruthless People Can Make a Valid Will**

People may be blinkered, difficult and downright ruthless but that does not mean that they are incapable of making a rational will. The High Court made that point in the case of a highly successful businessman who all but disinherited his children.

By his final will, the man bequeathed about £2 million to extended family members, friends and others whom he considered deserving. He left an estimated £4 million to a charitable trust he had established for the benefit of the people of his home town. His three children received just £5,000 each and his grandchildren nothing.

The trustees of the charity launched proceedings, seeking judicial confirmation of the will's validity. However, their application was resisted by one of the children, who asserted that the will was irrational. She argued that her father, who was aged 84 and had colon cancer when he made the will, was suffering from a personality disorder which had poisoned his mind against his immediate family.

Ruling on the case, the Court noted that he had a history of mental health difficulties. Almost 40 years before his death, he was made the subject of a hospital order after he admitted conspiring to murder his wife. However, he subsequently rebuilt his financial fortunes and was a wealthy man when he died, a few weeks after making the will.

He had an intensely difficult relationship with his children and had at one point cut off communication with them altogether. He lacked any understanding of the emotional harm that they had suffered during their childhood, instead viewing himself as the victim. He loved his children and showed them financial generosity for many years. However, he exploited his wealth as a means of exerting control over them.

The Court found that he was a complex person for whom business was always the dominating factor. Although a first-class operator when it came to finance, he lacked human warmth and empathy. He held strong, sometimes blinkered, views and the medical evidence suggested that ruthlessness, ambition, absorption in work and a suspicion of others formed parts of his personality.

He exhibited some features of a personality disorder. However, the Court noted that such disorders are relatively common in the general adult population and by no means entail a loss of capacity to make a valid will.

In upholding the will's validity, the Court noted that a solicitor had taken him through its terms in detail before he signed it. His gift to the trust reflected his abiding wish to leave a long-term legacy behind him. Although his lack of provision for his children and grandchildren might be regarded as unfair, the will was rational and there were no circumstances surrounding its execution to excite the Court's suspicion.

Contact us for expert advice on any matters relating to inheritance disputes.

**Partner Note**

*Wilkinson and Others v Hicken [2023] EWHC 1983 (Ch)*

**Executor Obtains Declaration of Presumed Death in Ground-Breaking Case**

When people go missing, a judicial declaration that they are presumed dead may be sought by certain members of their family and by others with a 'sufficient interest' in the matter. In a case that broke new legal ground, the High Court has ruled that the latter category extends to an executor of a missing person's will.

The case concerned a woman who had not been heard of since she drove down to and entered the sea in Cornwall. An only child who had lost both her parents, her closest living relatives were apparently two cousins.

A close friend, who was appointed as her executor in a will she made about two and a half years before her disappearance, sought a declaration of presumed death under the Presumption of Death Act 2013. However, an issue arose as to whether she had the legal standing required to pursue such an application.

Section 5 of the Act provides that the court must refuse to hear such applications if they are made by someone other than the missing person's spouse, civil partner, parent, child or sibling and the court considers that the applicant does not have a sufficient interest in the matter.

Ruling on the issue, the Court noted that the phrase 'sufficient interest' is not defined in the Act and that there was no previous legal authority on the point. Unless armed with a declaration, the only, somewhat antiquated, route that might be open to the executor in applying for probate was to seek permission to swear an oath to or give evidence as to the woman's death.

Until probate was granted, the Court could not know whether the will was valid or if it was the woman's final will. Having not been tested during the process of obtaining probate, it remained simply an unproved piece of paper, naming her friend as executor, and her estate could not be distributed in accordance with its terms.

The Court concluded that, on a true interpretation of the Act, a person who intends to prove a testamentary paper does have a sufficient interest in applying for a declaration of presumed death, even though the paper has not yet been proved. The executor thus had standing to make the application. In granting the declaration sought, the Court was satisfied on the evidence that the woman was deceased.

Contact us for advice regarding missing persons and declarations of death.

**Partner Note**

*Tolley v (No Defendant). Re: Fisher [2023] EWHC 979 (Ch)*

**Inheritance – Your Promises May Be as Binding in Death as They Are in Life**

Many children, particularly in farming families, build their lives on the foundations of a promised future inheritance. As a High Court ruling showed, such promises may be as binding in death as they are in life and those who renege on them do an excellent job of rendering their wills vulnerable to legal challenge.

The case concerned a farmer's son who left school at 15, without qualifications, and dedicated himself to working on the family holding. He and his proud, strong-willed and old-fashioned father had frequent rows and disagreements but, for decades, they worked together on the increasingly prosperous farm.

The son, who was in late middle age and suffering from multiple sclerosis, said that his father had made it clear to him from his earliest days that he was going to have a career in agriculture and that the farmland would one day be his. However, a few months prior to his death, his father made a new will that dashed any such expectations.

By the will, his father placed almost all his freehold land into a discretionary trust. In a side letter, he expressed his wish that the land should be held for the benefit of all his three children but should ultimately pass to his grandchildren in equal shares when they reached the age of 30.

After the son challenged the terms of the will, the Court found that his father had, on many occasions, assured him that he would inherit the farm. Usually made during arguments, those assurances were intended to be taken seriously and were his means of mollifying his son and ensuring that he stayed committed to the farm.

They were a significant inducement to the son to stay at the farm, to work hard and to bend himself to his father's will. He relied upon his father's word to his detriment, thereby rendering the assurances irrevocable. By the time the father came to make his final will, it was too late for him to change his mind.

There was no change of circumstances that could justify the father going back on his assurances. He appeared to think that his son was dying and that the farm was at risk of passing out of family hands. He was, however, wrong about his son's life expectancy and had no good reason for depriving him of his expected inheritance.

Issues as to how the son's legitimate expectations should be met were left over for agreement between the parties or further argument. However, the Court expressed the preliminary view that he should have the entirety of the farm, save for about 90 acres which were said to have development potential. Although he would have the agricultural value of those acres, their development value would remain in his father's estate and pass in accordance with his will.

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

**Partner Note**

*Spencer v Spencer [2023] EWHC 2050 (Ch)*

**Placing an Asset in Someone Else's Name Can Be Risky – Cautionary Tale**

People may have any number of reasons, good or bad, for placing assets they have paid for in others' names. However, as a High Court ruling underlined, without appropriate legal protections such arrangements are anything but risk free.

A householder with previous experience of renovating properties paid £230,000 for a building plot at the end of his garden. He had a good relationship with a builder who agreed to contribute his labour in developing the plot. Any profit generated by the joint venture was to be split equally between the householder on the one hand, and the builder and his wife on the other.

The plot was, however, bought in the sole name of the builder's wife. The purchase monies provided by the householder were described as a loan. Those arrangements were entered into in the hope that the wife would be considered a first-time buyer, thereby achieving a modest saving in Stamp Duty Land Tax (SDLT). In the event, no such saving was sought and SDLT due on the transaction was paid in full.

After relationships soured, the development did not proceed. The householder later launched proceedings with a view to having the plot transferred to him and re-registered in his name. The couple resisted his claim but it was upheld by a judge who found that he was the plot's sole legal and beneficial owner.

Ruling on the couple's challenge to that outcome, the Court emphasised the risks involved in the transaction. In the absence of a professionally drafted deed of trust, the owner's position as beneficial owner was unrecorded and unprotected. Although there was, in the event, no attempt to mislead HM Land Registry or to avoid paying about £2,000 in SDLT, any such attempt would have been fraudulent.

Dismissing the appeal, the Court ruled that the householder was the plot's true purchaser. The money he had provided was not a loan, although it was labelled and dressed up to appear as such. As he had paid the entirety of the purchase price, the builder's wife held legal title to the plot under a resulting trust for his benefit and was thus obliged to transfer it into his name for nil consideration.

The result of the case was consistent with the mutual understanding of all involved in the transaction and the spirit of the intended joint venture. Any other outcome, the Court found, would be disproportionate and work a palpable injustice on the householder.

It is vital to seek expert advice before entering into any kind of joint financial venture such as this. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Karpavicius and Another v Waites [2023] EWHC 2051 (Ch)*

**This is Why You Should Never Make a Will Without Taking Legal Advice**

Making a will without the benefit of professional legal advice is an excellent recipe for strife between your loved ones after you are gone. That was sadly so in the case of a cancer sufferer who had no understanding that, when she signed her will, she was disinheriting her two beloved children.

About two and a half years before she succumbed to the disease, the middle-aged woman signed a will which had been drafted for her by her younger brother using a template downloaded from the internet. Save for her collection of books, she bequeathed him the entirety of her estate, which was worth almost £400,000. The will represented a radical departure from a previous will by which she had divided her estate equally between her children.

After the children challenged the will's validity, the brother contended that it was a perfectly straightforward case in which she had simply changed her mind for good reasons, as she was fully entitled to do. He had faithfully carried out his sister's instructions in drafting a very clear and straightforward will, the terms of which she could not have failed to understand.

There was no dispute that the will was lawfully executed and that she had the mental capacity required to make it. However, in upholding her children's challenge, the High Court found that, having taken no legal advice, the woman fundamentally misunderstood what the effect of the document would be.

Her intention was that her brother, acting as her executor, would receive her estate and then apportion it between the children so as to reflect a disparity in lifetime gifts they had received from her. She failed to grasp that the effect of the document was to disinherit the children and give the entirety of her estate, bar her books, to her brother to keep for his own purposes.

The Court had no doubt that she deeply loved her children, who, despite their faults and foibles, were her pride and joy. She was grateful for her brother's support as she fought tooth and nail against her illness, but he had not replaced her children in her affections. Even after she signed the will, she continued to make reference to the children's upcoming inheritance.

The Court observed that there were aspects of the document, and the background history leading up to its execution, that excited suspicion. It found on the evidence that she lacked knowledge and approval of the will's contents and particularly its effect. In restoring the children's equal inheritance, the Court directed that the previous will should be admitted to probate.

For advice on making sure your estate will be dealt with fairly and efficiently, contact us.

**Partner Note**

*Ingram and Another v Abraham and Another [2023] EWHC 1982 (Ch)*

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