



Neutral Citation Number: [2024] EWHC 2021 (Ch)

Case No: PT-2024-CDF-000016

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Cardiff Civil and Family Justice Centre
2 Park Street Cardiff CF10 1ET

Date: 02/08/2024

Before :

HIS HONOUR JUDGE JARMAN KC

Sitting as a judge of the High Court

Between :

EMMA COULSON

Claimant

- and -

RONALD IVOR JAMES PAUL

Defendant

Mr Neil Fawcett (instructed by **Edwards Hoyle Solicitors**) for the **claimant**
The defendant appeared in person

Hearing dates: 22 July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 2 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE JARMAN KC

HHJ JARMAN KC:

Introduction

1. The claimant is the biological daughter of John Paul and the defendant is his brother. The claimant was adopted at an early age by the new husband of her mother. The brothers were the only children of Allan Paul, who died on 19 April 2021 leaving a will dated 24 October 2012. John and Allan Paul are both called Allan John Paul but are disitinguished in the family as already indicated. It was a very short will, clause 2 of which left his estate to his son John “provided always that if he shall pre-decease me leaving a child or children him surviving then such child or children shall take and if more than one equally between them the whole of my estate which their late father would have inherited had he so survived me.” John did predecease his father by some months. Whilst it is accepted that by section 67 of the Adoption and Children Act 2002 the claimant is to be treated in law as the child of her adoptive father and not of John Paul, Mr Fawcett for the claimant submits that on the proper interpretation of the will she comes within the definition of child, so as to inherit the estate. Alternatively she claims that the will should be rectified to that effect. These claims are denied by the defendant, who stands to inherit his father’s estate on intestacy if the claimant’s claims do not succeed.
2. The only witnesses who gave oral evidence before me were the parties themselves. Several witness statements on behalf of the defendant were sensibly admitted in evidence on the basis that there were no factual issues arising out of them, including that of Michael Downey, a solicitor who had drawn up the will on Allan Paul’s instructions. Although it appeared from the parties’ witnesses statements that there were factual issues between them, these narrowed in the course of oral evidence, so that the relevant factual background is now largely uncontroversial.

Factual background

3. Allan Paul’s wife died in 2001. It is now accepted that the claimant made contact with John Paul in 2004, when she was 26 and he was 49. Factual issues relating to a photograph of the two of them have become less important in light of that concession. So far as it goes, in my judgment it is likely from the youthful appearance of the claimant that the photograph was taken in 2005 as she says. The claimant, to her credit, accepted in her oral evidence that the building up of a relationship with John Paul took time. By the time that Allan Paul made his will, his son John had divorced again and was living with his father at 10 Farm Road, Caerphilly.
4. Mr Downey made an attendance note dated 11 October 2012 of Allan Paul’s attendance upon him regarding two matters, to make a will, and to transfer 10 Farm Road into the joint names of himself and his son John. The note records that he wished to leave everything to his son John, who looks after him. There was a reference to his other son, but the note records that he did not want to make any gift to him under the terms of his will, as he visited only when he needed cash and “his children are only interested in their grandfather’s money.” The note confirmed that he wished the son who looked after him to inherit. Mr Downey indicated he would draft a will and a side letter saying why the defendant was not to inherit.

5. That he did and sent the drafts by post to Allan Paul. The side letter indicated that he was making no provision for the defendant as he felt he had “provided handsomely for him in his lifetime. I do not wish him to benefit from my estate in any way whatsoever.” Allan Paul then attended Mr Downey at his offices where he executed the will which was witnessed by Mr Downey and a receptionist. There was no signed copy of the side letter before me and no indication that it was signed. What indication there is, is to the contrary. Mr Downey wrote again afterwards referring to the execution of the will and storing the original copy in the firm’s deed box, but there is no reference to the side letter. It is likely that Allan Paul did not sign it.
6. At this time, John Paul was aged 57, and although it may have been unlikely that no further children would be born to him, such an event remained a possibility.
7. To his credit the defendant accepted in cross-examination that there was a growing relationship between his brother and the claimant so that there came a point where his brother regarded her as his daughter. That much is clear from the fact that by his will dated 17 June 2016, John Paul referred to her as such and left her 50% of the proceeds of his property at 10 Farm Road. He left 40% to his brother the defendant and the remainder between cousins. He also had a family tree chart which showed her as his daughter.
8. Just how close that relationship became was a matter of some dispute between the parties, although that narrowed in oral evidence. In light of the defendant’s concession that his brother came to see the claimant as his daughter, the precise details of contact may not assist on the issue of interpretation or rectification of Allan Paul’s will. The claimant says that as her sons grew she would visit John and Allan Paul on the weekends when her sons were playing rugby and that John Pugh used to watch them play and there were family outings. In 2018 and 2019 both John and Allan Paul had frequent hospital visits, the former with heart disease and the latter with hip problems. She says that she used to drive the defendant to visit them, as he was unable to drive at this time on health grounds, which did not appear to be in dispute. The claimant has disclosed work records showing she took carers leave during these periods, although the detail of how much related to whom was not explored in any detail. She says she did shopping for them, although she accepted in cross-examination that latterly, at least, shopping was by delivery and that her assistance was limited to essentials when these run out. She also speaks of cash gifts and other presents from John Paul, and presents from Allan Paul.
9. Against this the written statements from friends and good neighbours of the Pauls suggest that Allan Paul made no mention of the claimant and they only saw the defendant and his children visiting. In particular, Susan Phillips was a carer for Mrs Paul, and after her passing, continued to visit Allan Paul everyday as his housekeeper. She saw or heard no signs that Allan Paul regarded himself as having a granddaughter. Given the sensitivities of the claimant’s background and the limitation of what a housekeeper or neighbours may see, that may not be that surprising. On the whole I accept the claimant’s evidence on these details, although it is likely that visits were not quite as frequent as she now recalls. She accepts that her visits were latterly restricted by Covid lockdowns.
10. John Paul passed away on 1 June 2020. The evidence of the defendant’s witnesses, which I accept, is that by then his father was at times forgetful and confused and not

well enough to attend the funeral. Allan Paul's own health continued to deteriorate and he passed away the following year. The defendant took out a grant of probate to his father's estate, the net value of which was given as just under £230,000.

11. Against that factual background I turn to the principles of interpretation or rectification of wills. The way that Mr Fawcett for the claimant put her case is that whether Allan Paul thought of the claimant as a grandchild is not a necessary part of the case, although her evidence is that he did. The reference in his will to a child of his son John can only sensibly have been intended to refer to claimant and that there was sufficient of a relationship for this to be the meaning of the word. That, with his desire not to leave his estate to the defendant shows that this is the obvious interpretation, or the will should be rectified.

Legal principles

12. The relevant provisions of the Administration of Justice Act 1982 are as follows:

“20. Rectification.

(1) If a court is satisfied that a will is so expressed that it fails to carry out the testator's intentions, in consequence—

(a) of a clerical error; or

(b) of a failure to understand his instructions,

it may order that the will shall be rectified so as to carry out his intentions.

“21. Interpretation of wills—general rules as to evidence.

(1) This section applies to a will—

(a) in so far as any part of it is meaningless;

(b) in so far as the language used in any part of it is ambiguous on the face of it;

(c) in so far as evidence, other than evidence of the testator's intention, shows that the language used in any part of it is ambiguous in the light of surrounding circumstances.

(2) In so far as this section applies to a will extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in its interpretation.

13. In *Marley v Rawlings* [2014] UKSC 2, [2015] AC 129, the Supreme Court referred to the interpretation of contracts in the context of wills. Lord Neuberger at [19-20] said this:

“When interpreting a contract, the court is concerned to find the intention of the party or parties, and it does this by identifying

the meaning of the relevant words, (a) in the light of (i) the natural and ordinary meaning of those words, (ii) the overall purpose of the document, (iii) any other provisions of the document (iv) the facts known or assumed by the parties at the time that the document was executed, and (v) common sense, but (b) ignoring subjective evidence of any party's intentions... When it comes to interpreting wills, it seems to me that the approach should be the same.”

14. The effect of adoption in law is dealt with in section 67 of the Adoption and Children Act 2002 as follows:

“Status conferred by adoption

(1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.

(2) An adopted person is the legitimate child of the adopters or adopter and, if adopted by—

(a) a couple, or

(b) one of a couple under section 51(2),

is to be treated as the child of the relationship of the couple in question.

(3) An adopted person—

(a) if adopted by one of a couple under section 51(2), is to be treated in law as not being the child of any person other than the adopter and the other one of the couple, and

(b) in any other case, is to be treated in law, subject to subsection (4), as not being the child of any person other than the adopters or adopter;

but this subsection does not affect any reference in this Act to a person's natural parent or to any other natural relationship.

(4) In the case of a person adopted by one of the person's natural parents as sole adoptive parent, subsection (3)(b) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.

(5) This section has effect from the date of the adoption.

(6) Subject to the provisions of this Chapter and Schedule 4, this section—

- (a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption, and so applies subject to any contrary indication, and
- (b) has effect as respects things done, or events occurring, on or after the adoption.”

The parties' cases

15. Mr Fawcett realistically accepts that applying those principles, the claimant was not at the time of the execution of the will or at any time since, the legal daughter of John Paul. She was and remains the daughter of her adoptive father. Accordingly by section 67(6) of the 2002 Act, those provisions apply for the interpretation of the will, but he submits that that is subject to any contrary indication. Again he realistically accepts that there is no such indication in the will itself. However, he submits that under section 21 of the 1982 Act, extrinsic evidence may be admitted to assist in its interpretation.
16. The extrinsic evidence he relies upon is as follows. The claimant was being treated as the child of John Paul and as grand-daughter of Allan Paul. She had re-established a family relationship primarily with John Paul but also with his father and was seeing them regularly. John Paul in his will refers to her as “my daughter Emma Coulson.” He had no other biological or adopted children and was not married or likely to have further children so it is likely that his father had the claimant in mind in referring to “child or children” of his son. Allan Paul did not want the defendant to inherit and it likely he wanted the claimant to inherit rather than the defendant in the event that his son John predeceased him.
17. The case of the defendant is that whilst his brother may have come to see the claimant as his daughter, his father did not. In law she remained the daughter of her adoptive father and not of John Pugh, and so the reference to his child or children cannot include her.

Conclusions

18. In my judgment, the first step must be to ascertain the meaning of the words which Allan John used in the will. It is relevant that he did not use just the word “child” but the phrase “child or children.” The interpretation of that phrase, excludes the claimant, because she is in law the child of her adoptive father. Under section 67(6) that is how the will must be interpreted in the absence of a contrary indication. It is not suggested that John Paul then had children, so that phrase must contemplate the possibility of children in the future. The phrase is not meaningless or ambiguous on the face of it.
19. For present purposes, I am prepared to proceed on that basis that the phrase may become ambiguous in light of the surrounding circumstances relied upon by Mr Fawcett, other than evidence of Allan Paul’s intention, within the meaning of section 21 of the 1982 Act. I am also prepared to admit such evidence. However, in my judgment that does not overcome the obstacle that the words used by Allan John excludes the claimant. I have accepted that his son John by 2016 was treating the claimant as his daughter. It is less clear that this was the case by 2012, but assuming it was, it does not follow that Allan Jones was treating her as a daughter of his son. The evidence falls short of a

proper base for such a finding. If he were, then the question would arise why he did not refer to her as such, in contrast to his son's later will.

20. I accept that it is a relevant factor that the will made no provision for the defendant, and that was so even in the event that his son John predeceased him. He then made provision for a child or children of John to inherit rather than the defendant. He made no further provision, and it is also relevant that he did not sign the side letter expressing the wish that the defendant should inherit no part of his estate.
21. In those circumstances there is no contrary indication to justify the interpretation of the Allan Paul's will other than in accordance with section 67(6) of the 2002 Act. Moreover, I am not satisfied that the will failed to carry out his intentions because of a clerical error or a failure to understand his instructions within the meaning of section 20 of the 1982 Act. It follows that the claim fails. I invite the parties to agree a draft order and to file the same at court within 14 days of hand down of this judgment, together with written submissions on any consequential matters which cannot be agreed, which will then be determined on the basis of those submissions.