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Maintenance of Children under the Inheritance Act

In re R (deceased) [2021] EWHC 936 (Ch)

Introduction

In a recent judgment of Master Teverson, the High Court held that even in circumstances where the deceased father had no contact with his children, and that in practice another person had assumed responsibility for the maintenance of the children, it would only be in the “*most exceptional circumstances*” where the Court would accept that the father’s “*obligation to maintain had been completely severed*”.

There was no general concept of a “*clean-break*” in respect of child maintenance. In so doing, the Master considered the provisions of the Inheritance (Provision for Family and Dependants) Act 1975 (the “1975 Act”), and drew a distinction between factors to be considered by the Court in a claim for reasonable financial provision by the children of the deceased compared to a claim by those who were treated by the deceased as their children.

Background

A claim was brought under the 1975 Act for reasonable financial provision from the deceased’s estate (the “**Estate**”) by two of

the deceased’s children, who were aged 18 and 17 respectively (the “**Children**”). The assets of the Estate primarily comprised 80% of the shares in two companies. In total, the Court found that the net value of the Estate was approximately £520,000 to £720,000.

In his latest will (the “**Will**”) the deceased gifted his shares in one company to his parents, and his shares in the other company to his partner of the last 7 years.

The Will made no provision for the Children, who were the biological children of the deceased from his earlier marriage to “N” (the “**Mother**”). The deceased and the Mother had divorced approximately 6 years prior to the deceased’s death, at a time when the Children were aged 10 and 9 respectively and attending a fee-paying preparatory school.

Subsequent to the divorce, the Children relocated with the Mother and her subsequent husband to Scotland.

Although there was initial contact between the Children



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and the deceased after the divorce, such contact ceased approximately 3 years prior to the deceased’s death, and the Court found that the Children had a “*negative attitude*” to the deceased.

Subsequent to the grant of matrimonial financial relief, the Mother had also made an application to the Child Support Agency for child maintenance. The Child Support Agency assessed the deceased’s obligation to maintain both the Children at £15 per week; an offer that was rejected by the Mother. Following the divorce, the Mother and her

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husband, the Children's step-father, financially maintained the Children, including sending the Children to fee-paying secondary schools.

The deceased was plainly aware of the risk of making no financial provision for the Children from his Estate. The Will stated expressly that no provision was being made for the Children. The Deceased had also made a statement to accompany the Will, which recorded his reasons for why he did not want the Children to benefit from the Estate. They were as follows:

- a) The Mother had left him, taking the Children with her to start a new life with her new husband in Scotland.
- b) An offer had been made by the Child Support Agency but this was rejected by the Mother, with the Mother subsequently no longer pursuing the claim.
- c) He had been prevented from having contact with the Children.
- d) The Mother had been clear that she did not want the deceased to be a part of the Children's life.

The Children, with the Mother as their litigation friend, did however bring a claim for "reasonable financial provision" from the Estate under the 1975 Act.

The General Principles

In his judgment, the Master set out the general principles for a claim for "reasonable financial provision" under the 1975 Act, drawing on the provisions of the 1975 Act and the leading case of *Ilott v The Blue Cross* [2018] AC 545.

In light of those general principles, the Master held that the fundamental issue for determination was "whether, and if so, how far the Deceased's estate should be required to provide for [the Children's] maintenance until they are in a position to earn a reasonable wage or salary"; paragraph 45.

Did the Will make reasonable financial provision for the Children?

The Master considered the factors set out in section 3 of the 1975 Act in evaluating whether the Will had made reasonable provision for the Children. Although the Master carefully considered the

other factors, he recognised that at the heart of the claim by the Children was whether the deceased at the date of his death continued to owe any obligations and responsibilities to the Children, and if he did, what was the nature and extent of those obligations and responsibilities; see paragraph 67.

It was argued on behalf of the defendants, the deceased's partner and parents, that neither at the time of making the Will nor on his death was the Deceased under a continuing obligation or responsibility to make provision for the maintenance of the Children. In particular, they relied on the following matters:

1. The deceased had not been providing for the Children since the divorce in 2012.
2. No efforts had been made by the Mother to compel the deceased to do so since the assessment by the Child Support Agency in 2013.
3. All direct contact between the deceased and the Children had stopped years before the deceased's death.
4. The responsibility for maintaining the Children had since the divorce been assumed entirely by the Mother and her new husband.

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On the other hand, it was argued on behalf of the Children that the deceased continued to have obligations and responsibilities to the Children both at the time of making the Will and at his death. In particular, they argued that such obligations arose from the very fact that the deceased was the father of the Children, and the Children were of school age whose education and training would be likely to continue for a number of years.

With respect to the latter, the Master noted that at the time the deceased and the Mother separated, the Children were attending a fee-paying school. There was an expectation that the Children would be educated privately subject to any affordability concerns.

Having regard to all the factors, and specifically the obligations of the deceased to the Children, the Master concluded that the Will failed to make reasonable financial provision for the Children in circumstances where they were excluded from the Estate and no other provision had been made for them.

In reaching this conclusion the Master noted a distinction to be drawn between claims by children of the deceased, and claims by those treated by the deceased as if they were his/her children. With respect to the latter, section 3(3) of the 1975 Act also requires the Court to have regard to:

1. Whether the deceased maintained the claimant, and if so, the length of time and the basis on which the deceased so.
2. Whether and, if so to what extent, the deceased assumed responsibility for the maintenance of the claimant.
3. The liability of any other person to maintain the claimant.

On the other hand, the Master noted the absence of such considerations in a claim by a child of the deceased, and the general obligations of a parent towards their children “*made it inappropriate to include these additional considerations*”; see paragraph 79.

In a clear statement with respect to how the Court will approach a claim by a child, who

is either a minor or a young adult, the Master stated:

“Whilst there may be exceptional or extreme cases, it will not generally be open to beneficiaries in response to an application by a child of the deceased to rely on the fact that the deceased failed to provide child support (even if not called upon to do so), or to rely on the fact that the child was treated by a step-father as a child of his family and assumed responsibility for his maintenance. Lack of contact and assumption of responsibility by another person are factors capable of impacting on the value of the claim. Only in the most exceptional circumstances would I expect the court to accept that the obligation to maintain had been completely severed. The concept of a clean-break is not generally applicable in respect of child maintenance.”

What reasonable financial provision should now be made for the Children?

Although the Master held that the deceased had made no reasonable financial provision for

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the Children, he was careful not to value the claim of the Children on the basis of compensating the Mother or any supposed unfair or unreasonable conduct by the deceased. In particular, it was sought to be argued that since the Mother had met the needs of the Children since the divorce without any contribution from the deceased it was reasonable and fair for the Mother to look for those needs to be met from the deceased's estate after his death; see paragraphs 50 and 81.

This was rejected by the Master, who held that “[*The Mother*] as the parent with care cannot reasonably expect the entire obligation for maintaining the [*Children*] to have shifted to the Deceased's estate consequential upon his death”. Rather, it was the Mother's decision to continue to send the Children to a private school without consulting the deceased, and it was open to the Mother to approach the deceased if school fees were becoming burdensome.

The Master stressed that the Court must bear in mind that

the claim is limited to what is reasonably required for the child's maintenance and the Court should “*guard against unreasonable claims made on a child's behalf by the surviving parent*”; see paragraph 82.

On the other hand, it was wrong for the defendants to argue that a claim for reasonable financial provision was only limited to payments enabling the claimants to discharge the costs of future living expenses. A claim for maintenance may be back-dated to the date of death or such later date as may be appropriate; see paragraphs 83-88.

Applying those principles, the Court held that in the circumstances reasonable financial provision for the Children from the Estate should be calculated as follows:

1. The Estate to pay 50% of the Children's living costs from the date of the hearing until the Children reach the age of 25.
2. The Estate to pay all the school fees of the older child

in respect of his last year at school.

3. The Estate to pay all the school fees of the younger child for his 5th form education and 80% of the fees for his 6th form education.
4. The Estate would not be liable to pay any additional costs for schooling, which should be met by the Mother.
5. The Estate to pay 50% of the Children's car related expenses on the basis that it was reasonable for each child to have a reliable second-hand car.
6. The Estate was not liable to pay for university tuition in circumstances where there were no tuition fees for attending a Scottish university and student loans were available to attend an English university. With respect to university accommodation, the Estate should pay 50% of the costs.
7. The Estate was not sufficient to finance the purchase of a property for the Children when they left university. In the circumstances, reasonable maintenance would mean

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50% of the costs for covering accommodation for a year after leaving university.

8. The Estate to pay 50% in respect of private counselling for the Children, who were severely emotionally affected their parents’ divorce and the fall-out from it.

In total, this meant reasonable financial provision for the older child amounted to approximately £68,000, whereas for the younger child it amounted to approximately £118,000.

Conclusion

This decision is a useful illustration of a claim under the 1975 Act brought by children of the deceased, in circumstances where the children were either minors or young adults, no provision had been made for them, and the deceased had expressly intended that his children should not inherit from his estate.

Despite the father’s clear intentions, the Court was clear

that even where a parent ceases to have contact with their children, the children are in practice maintained by other persons and the parent has failed to make provision during their lifetime, the parent does remain under an obligation to make reasonable financial provision for their children on death. If the parent fails to do so, then the Court will usually step in and make an order for such reasonable financial provision from the deceased’s estate. There may be extreme or exceptional circumstances where the Court does not interfere. An example may be where an adult child is financially independent in their own right and the size of the estate is limited.

To the contrary, to take into account factors such as whether the child was being maintained by the deceased prior to their death, would be to confuse a claim by a child of the deceased with a claim by somebody who was treated by the deceased as their child.

On the other hand, simply

because the deceased failed to provide for their children during his/her lifetime, does not mean that the estate should now be penalised for the purpose of quantifying a claim made by minors or young adults under the 1975 Act, or should be expected to compensate those who have historically provided for the Children. Instead, the Court will carefully consider the facts of the case in order to assess what constitutes reasonable financial provision in the circumstances.

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