FREETHS

Ilott v The Blue Cross and Others UKSC 17...
The Final Judgment

The long-awaited final judgment in the above case, involving the estate of the late Melita Jackson who died nearly 13 years ago, was handed down by the Supreme Court on 15 March 2017.

The Court unanimously allowed the appeal brought by Blue Cross, RSPB and RSPCA (the charitable beneficiaries of the estate) against the earlier decision of the Court of Appeal to award the deceased's daughter £163,000 in satisfaction of her claim for provision from the estate; and reinstated the original District Judge's award of £50,000.

We shall examine, below, the background to the case; the course of the proceedings through the courts; the principles enunciated by the Supreme Court, in delivering its judgment; and the pertinent points arising from the judgment.

Background details

- This case involves a lifelong estrangement between a mother, Mrs Melita Jackson, and her daughter, Heather Ilott, which lasted 26 years. The estrangement resulted from Mrs Ilott leaving home in 1978, at the age of 17, to live with her boyfriend, of whom her mother disapproved.

- Mrs Ilott married the man she left home to live with and they are still together and have five children.

- There had been three attempts at a reconciliation between mother and daughter over the years, but all had foundered. Mrs Jackson died in 2004, at the age of 70.

- Mrs Ilott and her husband lived their entire married lives independent of any financial connection with Mrs Jackson and, for the majority of that time, in complete isolation from her.

- Mrs Ilott and her family lived in a house rented from a Housing Association. Mrs Ilott was not employed except as her husband's bookkeeper for £240 per year. Her husband had intermittent work and earned a little over £4,100 per annum (net). Most of the rest of the family income was in the form of child benefit and working tax credits. The family was also entitled to housing benefit and council tax benefit. The clear evidence was that Mrs Ilott and her family were "*distinctly limited in what they could do*."

- Mrs Jackson's decision not to make any provision for her daughter in her will was not a decision taken in haste; she had made it as early as 1984, when she entered into a will and prepared a letter of wishes. This decision remained firm and Mrs Jackson reiterated it in 2002 when she made her last will, and again left a side letter, in which she instructed her executors to resist any claim which Mrs Ilott might make.

- Apart from a modest legacy to a benevolent association, Mrs Jackson's will left her estate to charities with which she had had no particular connection, but they represented her considered choice of beneficiaries. The estate was worth approximately £486,000.

- Following her mother's death, Mrs Ilott brought proceedings against the estate under the Inheritance (Provision for Family and Dependants) Act 1975 ("*the 1975 Act*"), claiming that her mother's will failed to make reasonable financial provision for her maintenance.

The course of the proceedings

- The District Judge at first instance (DJ Million, sitting in the **Principal Registry of the Family Division**) awarded Heather Ilott £50,000 in satisfaction of her claim. However, Mrs Ilott was dissatisfied with this amount and appealed against the decision; the charities simultaneously cross-appealed challenging the conclusion that there had been a failure to make reasonable financial provision.

- Eleanor King J, sitting in the **High Court**, heard the charities' cross appeal first and held that the District Judge should have found there was *no* lack of reasonable provision; she accordingly dismissed Mrs Ilott's claim.

- Mrs Ilott appealed to the **Court of Appeal**; her appeal was allowed and the court remitted back to the High Court Mrs Ilott's appeal as to the amount of the order.

- Parker J, in the **High Court**, upheld the District Judge's order of £50,000.

- Mrs Ilott appealed that decision also. The case came back before the **Court of Appeal**, who allowed the appeal and awarded Mrs Ilott (1) £143,000 to buy the house she lived in and (2) an option to receive a further £20,000 in one or more instalments.

- The charities appealed to the **Supreme Court**, whose judgment was delivered on 15 March 2017. The Supreme Court allowed the charities' appeal on the basis that the District Judge had not erred in reaching his decision; and that his award did in fact meet many of Mrs Ilott's needs for maintenance. The Supreme Court accordingly re-instated the District Judge's original award of £50,000.

Principles arising in 1975 Act claims

The Supreme Court discussed in its judgment some of the main principles applicable to claims under the 1975 Act, pointing out that:

- Unlike some other systems, English law recognises the freedom of individuals to dispose of their assets by will after death in whatever manner they wish; subject to the court having power in defined circumstances to modify the will or intestacy rules (as applicable) if satisfied that they do not make reasonable financial provision for a limited class of persons, under the 1975 Act (see below).

- Only a limited class of persons may make an application under the 1975 Act, namely spouses and partners (civil or de facto), former spouses and partners, children, and those who were being maintained by the deceased at the time of death. All but spouses and civil partners at the time of death can claim only what is needed for their maintenance.

- The factors set out in section 3 of the 1975 Act are all to be considered so far as they are relevant, and in the light of them a single assessment of reasonable financial provision is to be made.

Pertinent points arising out of the Supreme Court's judgment

We shall set out below what we consider to be the most pertinent comments made by the Supreme Court in its judgment:

Reasonable financial provision

- The two questions for consideration under the 1975 Act will usually be: (1) did the will/ intestacy make reasonable financial provision for the claimant and (2) if not, what reasonable financial provision ought now to be made for him? In many cases, exactly the same conclusions will both answer the question whether reasonable financial provision has been made for the claimant and identify what that financial provision should be.

- For current spouses and civil partners, need is not the measure of reasonable financial provision, but if it exists it will clearly be very relevant. For all other claimants, need (for maintenance rather than for anything else, and judged not by subsistence levels but by the standard appropriate to the

circumstances) is a necessary but not a sufficient condition for an order. The Supreme Court found that needs will not always be enough to justify a claim under the 1975 Act.

- The reasonableness of the deceased's decisions are undoubtedly capable of being a factor for consideration under the 1975 Act. However, the deceased may have acted unreasonably, indeed spitefully, towards a claimant, but it may not follow that his dispositions fail to make reasonable financial provision for that claimant, especially (but not only) if the latter is one whose potential claim is limited to maintenance.

- The circumstances of the relationship between the deceased and the claimant may affect what is the just order to make. Sometimes the relationship will have been such that the only reasonable provision is the maximum which the estate can afford; in other situations, the provision which it is reasonable to make will, because of the distance of the relationship, or perhaps because of the conduct of one or other of the parties, be to meet only part of the needs of the claimant (although the Supreme Court stated that care must be taken to avoid making awards under the 1975 Act primarily rewards for good behaviour on the part of the claimant or penalties for bad on the part of the deceased).

- The estrangement was one of the two dominant factors in this case; the other was Mrs Ilott's very straitened financial position. Some judges might legitimately have concluded that the very long and deep estrangement had meant the deceased had no remaining obligation to make any provision for her independent adult child. As it was, the judge was perfectly entitled to reach the conclusion which he did, namely that there was a failure of reasonable financial provision, but that what reasonable provision would be was coloured by the nature of the relationship between mother and daughter.

- In some circumstances, receipt of state support greater than the testator could sensibly provide may be an understandable reason why it was reasonable for the deceased not to make financial provision for the claimant. More generally, benefits are part of the resources of the claimant, and it is relevant to consider whether they will continue to be received.

- Where a court has to assess whether reasonable financial provision has been made, and/or what it should be, the relevant date is the date of the hearing. Of course, on an appeal, if the question is whether the trial judge made an error of principle the facts and evidence must be taken as they stood before him.

Is a moral claim necessary?

- There is no requirement for a moral claim as a "*sine qua non*" for all applications under the 1975 Act and the Judge in *In re Coventry* (approved in this case) did not impose one. He meant no more, but no less, than that in the case of a claimant adult child well capable of living independently, something more than the qualifying relationship is needed to found a claim. Clearly, the presence or absence of a moral claim will often be at the centre of the decision under the 1975 Act.

The concept of maintenance

- The level at which maintenance may be provided is clearly flexible and falls to be assessed on the facts of each case.

- The concept of maintenance is no doubt broad, but cannot extend to any or every thing which it would be desirable for the claimant to have.

- Maintenance must import provision to meet the everyday expenses of living. In this case, Mrs Ilott made a strong case for the necessity of spending a substantial sum on items which could properly be described as necessities for daily living; these included such things as essential white goods, basic carpeting, floor covering and curtains, and the replacement of worn out and broken beds. These items could perfectly sensibly fit within the concept of "*maintenance*".

- It is not the case that once there is a qualified claimant and a demonstrated need for maintenance, the testator's wishes cease to be of any weight. They may of course be overridden, but they are part of the circumstances of the case and fall to be assessed in the round together with all other relevant factors.

- It will very often be more appropriate, as well as cheaper and more convenient for other beneficiaries and for executors, if income is provided by way of a lump sum from which both income and capital can be drawn over the years. But it is necessary to remember that the statutory power is to provide for maintenance, not to confer capital on the claimant. If housing is provided by way of maintenance, it is likely more often to be provided by a life interest rather than by a capital sum.

Approach of appeal court

- In terms of the approach of an appeal court, the order made by the judge ought to be upset only if he has erred in principle or in law. An appellate court will be very slow to interfere and should never do so simply on the grounds that its judge(s) would have been inclined, if sitting at first instance, to have reached a different conclusion.

- A respectable case could be made for the District Judge to have found at least three very different solutions, with regard to Mrs Ilott's claim: (i) he might have declined to make any order at all (Lady Hale pointed out that this option had not been open to the Court of Appeal, at the time of making its award, and was not open to the Supreme Court now); (ii) he might have decided to make an order which would have the dual benefits of giving the applicant what she most needed and saving the public purse the most money (in effect what the Court of Appeal did); or (iii) he might have done what in fact he did for the reasons he did. The District Judge's decision should not have been disturbed.

The charities

- With reference to the charitable beneficiaries of the estate, the Supreme Court made the following helpful comments:

    - "*The claim of the charities... was not based on personal need, but charities depend heavily on testamentary bequests for their work, which is by definition of public benefit and in many cases will be for demonstrably humanitarian purposes";*

    - *More fundamentally, these charities were the chosen beneficiaries of the deceased. They did not have to justify a claim on the basis of need under the 1975 Act, as Mrs Ilott necessarily had to do. The observation... that, because the charities had no needs to plead, they were not prejudiced by an increased award to Mrs Ilott is, with great respect, also erroneous; their benefit was reduced by any such award. That may be the right outcome in a particular case, but it cannot be ignored that an award under the Act is at the expense of those whom the testator intended to benefit*."

Conclusions

The Supreme Court decision represents good news for charities, who will welcome the above comments, in contrast to those made previously by the Court of Appeal, who had unhelpfully referred to the charities as having received a "*windfall*". Those comments have thankfully been superseded by the Supreme Court judgment.

Whilst the decision may not be so positive from the perspective of adult children wishing to bring claims, it seems, nevertheless, that cases will very much continue to be determined according to their own facts. As the Supreme Court commented in this case, there was no occasion for the court to attempt to meet every difficulty to which claims for family provision may give rise.

Lady Hale also stated, in an additional judgment delivered alongside the main Supreme Court judgment, that the problem with the present law is that it gives virtually no guidance as to the factors to be taken into account in deciding whether an adult child is deserving or undeserving of reasonable maintenance. She commented: "*I regret that the Law Commission did not reconsider the fundamental principles underlying such claims when last they dealt with this topic in 2011*."

It will therefore be important for both charities and individuals to continue to take legal advice upon the merits of individual cases, which may well be distinguishable from the decision in *Ilott*, based upon their own particular facts.

Freeths acts for both charity clients and private individuals in connection with claims under the 1975 Act. Queries by charities should be directed to Angela Bowman, head of the firm's charity probate litigation team, on 01865 781210 or by email to angela.bowman@freeths.co.uk.

For any queries relating to claims by private clients, please contact Sarah Foster, a partner in the private client contentious probate practice. Sarah can be contacted on 01865 781055 or by email at sarah.foster@freeths.co.uk.

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