INHERITANCE / DISPUTED WILL

SUPREME COURT DECISION:

CHARITIES REFUSED PERMISSION TO APPEAL, WHERE COURT OF APPEAL HAD OVERTURNED A WILL WHICH DELIBERATELY GAVE ALL THE ESTATE TO THREE CHARITIES, LEAVING THE DECEASED'S ONLY CHILD WITH NOTHING.

The case of Ilott –v- Mitson & Others [2011] EWCA Civ 346 attracted a lot of comment when it was decided in March 2011. The Charities' request for permission to appeal to the Supreme Court (House of Lords as was) has now been refused (27 June 2011).

Mrs Ilott's success in the Court of Appeal has been upheld therefore: she was aged 50 and an only child. Her estranged Mother had excluded her from the Will, in favour of the Charities. The Mother had left a detailed Letter of Wishes explaining why she was not leaving anything to her Daughter. All of the Estate, in the region of £500,000 had been left to animal charities.

There had been little contact between them for many years, ever since Mrs Ilott had left home when 17 to marry her boyfriend. There has been much commentary saying that the decision undermines testamentary freedom. However, the decision, whilst noteworthy, did not involve any change in the law. The case re-states the position, that a disappointed Beneficiary has to prove their claim under the Inheritance (Provision for Family and Dependants) Act 1975 (IPFDA).

It was always intended by Parliament following the removal of restrictions in the Inheritance (Family Provision) Act 1938 that an adult child should be able to claim, irrespective of whether the child could subsist without seeking provision from the Estate.

The Ilott decision followed the case law and the requirement to take into account all the factors set out in section 3 of IPFDA in deciding whether the financial provision for a Claimant under the Act is unreasonable.

The position remains that an adult child has to prove a case under the Act. As is common, the decision rests on the specific facts of the case: Mrs Ilott was not disabled, but the court was right to look at all the circumstances. The court was critical of the letter that the Mother had left explaining why no provision was made and this was found to be neither accurate nor truthful.

Also, no explanation of why she had chosen the three Charities was given and she had demonstrated no interest in any of these Charities previously. The court considered that there was no rational purpose to the bequests. The inference was that they had been made out of spite. This alone would not have enabled the Claimant to succeed. Her specific circumstances were important. Mrs Ilott and her family lived on a mixture of her husband's sporadic earnings (due to a bad back) and benefits.

In the circumstances, the District Judge was entitled to decide that it had been unreasonable for the Mother to make no provision for her Daughter, but also she did need provision for her maintenance. The Court of Appeal encouraged the parties to settle by amicable negotiation, failing which it was to be remitted back to the High Court.

The upshot is that there has been no major sea change in the way that the law is applied. A Testator should be cautious about excluding their nearest and dearest, bearing in mind the potential costs and distress of a dispute.

Article by J Paul Sykes, LLP, LLM

The contents of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.