



PUMP COURT

CHAMBERS

Update on adult and minor children claims under the 1975 Act

Annie Ward



Shapton v Seviour [2020] Lexis Citation 200 Deputy Master Lloyd (6th April 2020)

- Colin died, leaving a widow Maria, to whom he had been married for 17 years. He had two children by an earlier marriage, Carly and Chris.
- The estate was only worth £268,000 of which £215,000 was his half share in the house he owned with Maria. By his will, his estate passes in its entirety to Maria.
- At the time of his final illness, Maria was diagnosed with Motor Neurone Disease (“MND”). By the time of the hearing, she was wheelchair bound, could not work and had paid for the house to be adapted. She had live in care and was also supported by her daughter.
- Carly issued claim on the last day before the expiry of the limitation period

Shapton v Seviour [2020] Lexis Citation 200 Deputy Master Lloyd (6th April 2020)

- Carly was 32 and married. She had two very young children. Carly worked at a hotel but was on maternity leave at the time of the hearing. Her husband earned £37,500, a bonus and had a company car.
- Carly lived in a house worth £240,000 and had £20,000 of credit card debt
- She said that she was in need because she could not afford holidays. In fact the court found that this was disingenuous and that she and her husband had taken several luxurious holidays.
- Carly and Maria had a toxic relationship because Carly felt that her father had not offered enough money towards the cost of her wedding.

Shapton v Seviour [2020] Lexis Citation 200 Deputy Master Lloyd (6th April 2020)

- Unsurprisingly, the court found that Maria needed the whole estate, and Carly did not.
- The application was described as “absolutely hopeless”.
- Carly was said to be “motivated by the view that she was entitled as of right to one quarter of her father’s estate. She clearly is not”
- Maria had changed her will (to exclude Carly) which was said by the court to be “her prerogative”.
- The court contains no costs judgment but it would seem inevitable that Carly would have to pay Maria’s costs.

Re H (Deceased) [2020] EWHC 1134 Cohen J (7th May 2020)

- Claim by a 50 year old adult daughter of the deceased.
- The deceased had died suddenly in a fire. His will left the estate to his wife. By the time of the hearing, she was in a care home. The executor was their son.
- The estate was worth £554,000 net.
- The Claimant had lived at home until she was 30. She had then gone to university (in 2000). She met her partner and in 2011 had a child, followed by another in 2014. She had profound post-natal depression.

Re H (Deceased) [2020] EWHC 1134 Cohen J (7th May 2020)

- The Claimant had long standing psychological problems. The report before the court said she had been estranged from her family for the last 20 years.
- The Claimant was on benefits, lived in a rented flat which was too small for her, and needed psychiatric treatment.
- She claimed:
 1. £375,000 - £500,000 as a housing fund
 2. £20,000 for psychological treatment
 3. £48,000 as an income fund
 4. £133,000 for her costs

Re H (Deceased) [2020] EWHC 1134

Cohen J (7th May 2020)

- The court applied *Ilott v Mitson* [2017] 1 FLR 1717
- The Claimant received £138,918 made up of:
 1. £17,000 for psychological treatment
 2. £48,000 for the income shortfall
 3. £32,000 to cover the loss of universal credit for 3 years
 4. £15,000 for white goods and a car
 5. £10,000 to enable her to move to another rented property
 6. £16,750 to enable her to meet a “reasonable” conditional fee mark up

Re H (Deceased) [2020] EWHC 1134

Cohen J (7th May 2020)

- The court accepted that the Claimant's success fee was a capital need even though it was not something which the estate could be ordered to pay as part of a costs order.
- The court accepted that the priority was to ensure that the mother could meet her care home costs for the rest of her life. Given the size of the estate, this meant that the Claimant's wish for a housing fund had to fail.
- The award was based upon the finding that, notwithstanding the estrangement between the claimant and her parents, her current precarious financial state was caused by her own debilitating mental health problems rather than any "fault" on her part.

Rochford v Rochford [2020] Lexis citation 95 (2nd February 2021)

- The Deceased left a very modest estate - £193,000. The Claimant (D's daughter and only child) was left a legacy of £25,000. The Defendant was D's sister. She defended the claim.
- C had proposed mediation. D refused, saying the claim was hopeless and C's disclosure was inadequate
- C had to go to trial where she was awarded £85,000 as well as her legacy of £25,000. She beat a Part 36 offer.
- She received costs on an indemnity basis for the period after the Part 36 offer, an additional 10% for beating the offer, interest of 5% and an interim payment if the costs had to go to assessment. Those costs had to be paid by the Defendant personally.

In the estate of R [2021] EWHC 936 (Ch) Master Teverson, (16th April 2021)

- This was a claim by 2 minor children, one of whom reached 18 during the litigation (the other was 17). Their father died in October 2018 aged only 41. He had been divorced from their mother in 2012. He had suffered from a progressive illness for many years and was on a waiting list for a lung transplant.
- The 1st Defendant was the father's partner and executor of his estate. The 2nd and 3rd Defendants were his parents, who held shares in the Deceased's companies RCL and RPS.
- The will left everything to the Defendants and made no provision for the sons at all.
- The estate was worth between £643,000 and £813,000 depending on how the company shares were valued.

In the estate of R [2021] EWHC 936 (Ch) Master Teverson, (16th April 2021)

- After the divorce, the CSA only assessed D as being liable to pay £7.50 a week in child maintenance. He worked for the family company and could manipulate his income. His ex-wife N was so exhausted by the divorce that she said she could not be bothered to challenge him via the CSA and she chose not to pursue child maintenance.
- Shortly after this, N and her new husband moved to Scotland with the boys. They had some holiday contact with D but were negative about it and it ended in 2014.
- In 2018 D died. N originally sought to challenge the will but later chose not to and acted as litigation friend to the boys bringing a 1975 Act claim.

In the estate of R [2021] EWHC 936 (Ch) Master Teverson, (16th April 2021)

- J, the 18 year old, sought £353,518 and H £458,431 as a composite award for school fees, extras, cars, university costs including accommodation and tuition fees, future housing and counselling costs.
- N said that as she had met the boys' needs without assistance from D since 2012, it was his turn after his death to do the same.
- N's husband had assets of £2.9 million. N had sent the boys to a private school without consulting D, and her mother had helped with the fees.
- S said that D had no obligation to maintain the boys as N had cut off contact and she had chosen not seek child maintenance.

In the estate of R [2021] EWHC 936 (Ch) Master Teverson, (16th April 2021)

- The court disagreed. The obligation to maintain minor children exists regardless of whether the parent with care pursues it or not.
- However, the idea that D's estate should assume 100% of the obligation was wrong.
- Excluding the cost of buying a property, the claim was for £396,000. Including a claim for a 15% deposit on a flat, it was £472,000.

In the estate of R [2021] EWHC 936 (Ch) Master Teverson, (16th April 2021)

- The court awarded:
 1. 50% of the cost of the boys at home during school/uni holidays
 2. School fees for the younger boy to finish 6th form, but no backdating of school fees.
 3. No school extras
 4. 50% of the cost of driving lessons and a car
 5. Nothing for tuition fees as both boys could go to a Scottish university and have free education. If they choose not to, they can get a student loan
 6. 50% of university accommodation
 7. Not reasonable to buy a house. Instead 50% of the cost of renting for a year after university
 8. 50% of the cost of one year of counselling on the basis of the evidence provided.
 9. Total award: £117,962

Miles v Shearer [2021] EWHC 1000 Ch. Sir Julian Flaux (Chancellor)(23rd April 2021)

- Anthony Shearer (“Tony”) died in October 2017 aged 68. The Claimants were his two daughters Juliet (40) and Laretta (39). Their mother is Jennifer who was divorced from Tony in 2007.
- Tony’s will left everything to his second wife, Pamela, who was also the executor.
- The estate was valued at £2.19 million, but that did not include jointly owned properties in Kew or Provence which passed to Pamela by survivorship.

Miles v Shearer [2021] EWHC 1000 Ch. Sir Julian Flaux (Chancellor)(23rd April 2021)

- Juliet, Laretta and Jennifer gave evidence and were found to be unsatisfactory witnesses. They were found to have deliberately misled the court.
- Juliet and Laretta had both gone through marriages and divorces. They had not been financially supported by Tony during their adult lives. Juliet was living with Jennifer, and her children, in a house in Wiltshire. Laretta had a share in a flat in London that she had retained as part of her divorce. She worked for Sotheby's and had a reasonable income.
- Juliet has a child with special needs who would probably not achieve independence. Juliet had capital of about £300,000.

Miles v Shearer [2021] EWHC 1000 Ch. Sir Julian Flaux (Chancellor)(23rd April 2021)

- Laretta sought £244,000 to reduce her mortgage to a level where she could turn it into a full repayment mortgage rather than interest only. The court concluded that such a claim was not “maintenance” within the meaning of the Act.
- She also sought capital to buy out her ex-husband’s interest in the flat (represented by a mesher order made in her divorce proceedings which would not trigger until 2034). That was not considered to be a financial need.
- The case is useful in that, unlike other adult child claims, this is an example of one where a surviving parent was offering financial assistance to the claimants with funds which derived from her divorce from Tony. That support was taken into account
- The court concluded that neither Claimant had demonstrated a need and their claims were dismissed. Pamela did not plead her own needs and had provided no financial disclosure.

Thank you for listening

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