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Challenging inheritance claims: Finding reasonable financial provision in an unreasonable Will

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In a recent UK inheritance claim case *(Fennessy v Turner & anr [2022] WTLR 1295),* an adult child won an inheritance claim against his mother's estate. The disabled son won £195,000 from his late mother's estate after being left out of her Will. The estate's executor and sole beneficiary subsequently lost an appeal, with the appeal court upholding the original decision.

Under UK legislation **(The Inheritance (Provision for Family and Dependants) Act 1975)**, certain individuals are entitled to make a claim against an estate if they are left without 'reasonable financial provision'. They include the deceased's children, spouse, civil partner, former spouse or civil partner, someone who was living with the deceased for at least two years before their death, someone who was treated as their child by the deceased, or someone who was maintained financially by the deceased.

What is considered to be 'reasonable financial provision' will depend on who makes a claim against the estate and, in most circumstances, the court will consider whether any financial provision is reasonable. Under its own discretion the court will look at a variety of factors including:

- the financial resources and needs of any applicant or beneficiary of the estate
- the deceased's obligations and responsibilities towards them
- the size and nature of the net estate; and
- any other matter which the court may consider relevant.

Case background

Patrick Fennessy, the 60-year-old son of Hazel Fennessy was the only living child of his mother at the time of her death on 2 February 2020.

In her Will, Hazel left everything in her estate, which had a net value of £336,089.00, to her friend June Turner. Mrs Turner is a vet and it was noted that she had adequate means of support and did not need the money from the estate to support herself.

By contrast, Mr Fennessy was 60 years of age and had a disability caused by osteoarthritis. Mr Fennessy claimed that his mother's will did not make reasonable financial provisions for him. This was despite assurances from his mother that he would inherit 'everything'.

Mrs Turner defended the claim in support of Hazel's Fennessy 'testamentary freedom.'

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Judgment

In the initial judgment, Mr Fennessy was awarded £195,000 in his claim alongside his legal costs. It was determined that Mr Fennessy required financial assistance due to his 'necessitous circumstances'; namely, his disability, low income and his need for more suitable accommodation.

The Judge commented, 'although Patrick is an adult son, I do not consider, in the light of his current resources and limited earning capacity, that he can presently be said to be capable of living independently...'

The defendant brought an appeal on five grounds which were subsequently dismissed by Fancourt J.

The Judge affirmed that testamentary freedom does not have higher significance than other factors. In this case, the size of the deceased's estate allowed for an award to be made to Mr Fennessy and still left a substantial sum to be distributed to Mrs Turner in accordance with the terms of Hazel Fennessy's Will.

Summary

This case is a strong reminder to defendants that inheritance claims by adult child claimants should be handled with an abundance of caution. Each case is resolved on a case-by-case basis. Defendants should refrain from placing heavy reliance on the principle of 'testamentary freedom' - particularly when the size of the deceased's estate allows for an award to be made and the claimant has genuine circumstances for seeking financial assistance.

Guernsey has implemented a similar mechanism to seek 'financial provision' under **The Inheritance (Guernsey) Law 2011**, whereby certain classes of individuals are able to make a claim against an estate if they feel that they have not been provided with 'reasonable financial provision' either under the terms of a Will, or due to Guernsey's laws of intestacy (where there is no Will).

If you think you may have a claim against an estate or you are facing a potential claim against an estate, seeking legal advice as early as possible will provide you with the greatest chance of successfully bringing or defending a claim.

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