

# Family Law

## Claims under the *Inheritance Act* by adult children – the law after *Snapes v Aram*

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This paper seeks to examine claims by adult children under the *Inheritance (Provision for Family and Dependents) Act* 1975 ('the act') in the light of the recent decision of the Court of Appeal in *Snapes v Aram*, *The Times*, 8 May 1998.

Any child of a deceased person qualifies to make a claim under s. 1(1)(c) of the act if the will or the intestacy rules (or a combination of the two) fails to make reasonable financial provision for the applicant. Prior to the 1975 act coming into force, adult unmarried daughters might qualify for relief under the statutory provisions then in force (*the Inheritance (Family Provision) Act* 1938), as might an adult child incapable of maintaining himself by reason of mental or physical disability, but there was no general right for adult children to apply.

The 1975 act expressly made 'fresh provision for empowering the court to make orders for the making out of the estate of a deceased person of provision' (see the preamble to the act), for various classes of applicant, including adult children. Although, as Oliver J made clear in the leading case in *Re Coventry, deceased* [1980] 1 Ch 461, this 'fresh' provision forms part of a continuum and the body of case law, built up under the earlier legislation, is not to be ignored, this is of relatively little value in considering claims by adult children since these could not generally be made under the old law. There is also relatively little post-1975 act guidance.

It is suggested that the significance of *Snapes* lies primarily in its emphasis on

the balancing exercise. This must be carried out by the court when weighing the statutory criteria for evaluating a claim set out in s. 3 of the act and in laying to rest any misconceptions which may have arisen in certain quarters. Post-1975 pronouncements by the Court of Appeal, particularly in *Coventry* and in *Re Jennings, deceased* [1994] Ch 286, which have the effect of requiring an adult child to establish either a moral claim or the existence of special circumstances before a claim can be successful are mostly responsible for the confusion and misconceptions mentioned above. *Snapes* also contains some useful observations on:

- the effect of delay;
- the significance of a change in circumstances after the death of the testator; and
- the extent to which account should be taken of the testator's expression of feelings towards an applicant.

### MORAL CLAIM/SPECIAL CIRCUMSTANCE

*Coventry* concerned an adult male child of the deceased in his forties. He had lived with his late father in the latter's house. The applicant's mother had been estranged from his father for many years and there had been no contact between them. She was 74 and living in a small council flat at the date of the hearing. She had an equitable interest in the deceased's house and stood to inherit the rest under the intestacy rules. The applicant, who earned a very modest living as a chauffeur and who was about to lose the roof over his head as the result of his father's death intestate, duly made application under the 1975 act. His claim was rejected by Oliver J, whose judgment was upheld by the Court of Appeal.

Oliver J was, rightly, at pains to express that the court has no *carte blanche* to rewrite a will or the intestacy laws laid down by Parliament. At p. 475c, he said:

*'It cannot be enough to say "here is a son of the deceased; he is in necessitous*

*circumstances; there is property of the deceased which could be made available to assist him but which is not available if the deceased's dispositions stand; therefore those dispositions do not make reasonable provision for the applicant"'. There must, as it seems to me, be established some sort of moral claim by the applicant to be maintained by the deceased or at the expense of his estate beyond the mere fact of a blood relationship, some reason why it can be said that, in the circumstances, it is unreasonable that no or no greater provision was in fact made.'*

Goff LJ commented on this passage in the Court of Appeal, at p. 487:

*'But it is said that ... Oliver J fell into error ... he in effect made a moral obligation a precondition of such an application succeeding ... I reject [this]. Oliver J nowhere said that a moral obligation was a prerequisite of an application under s1(1)(c); nor did he mean any such thing. It is true that he said a moral obligation was required, but in my view that was on the facts of this case, because he found nothing else sufficient to produce unreasonableness.'*

As Butler-Sloss LJ observed in *Snapes*, the reasons for the decision in *Coventry* were 'neatly described' by Nourse LJ in *Jennings*, at p. 295:

*'on an application by an adult son ... who is able to earn, and earns, his own living there must be some special circumstance, typically a moral obligation of the deceased towards him ... [The] principle ... is applicable no less to the case of a daughter ... In [Coventry] Oliver J was of the opinion that financial provision was reasonably required for the applicant's maintenance. But his application failed because the deceased owed him no moral or other obligation and no other special circumstance was shown.'*

The applicant in *Jennings*, a male in his prime with his own business and a comfortable lifestyle, failed in the Court of Appeal on the same basis as the applicant in *Coventry*. In the absence of a moral claim or special circumstances, both claims were held to fail.

A claim did succeed in *Re: Goodchild, deceased* [1997] 1 WLR 1216 but the Court of Appeal held that a moral obligation by the deceased to his only son had been established. The deceased and his first wife had executed wills in identical terms leaving their respective estates to each other in the event of surviving the deceased spouse by 28 days but otherwise on trust for their only son. It was decided that the doctrine of mutual wills did not apply, so that the testator, who had inherited his first wife's estate, was legally free to leave his (and her) estate to his second wife but that, in all the circumstances, the deceased was under a moral obligation to devote as much of his first wife's estate to his son, who was in straitened circumstances, as would have come to him if the doctrine of mutual wills had operated. *Goodchild* is, therefore, a moral claim case.

*Snapes* appears to be the only 1975 act case to have reached the Court of Appeal in which an adult applicant succeeded despite no moral claim or special circumstance being established. The facts of the case were somewhat unusual but, on those facts, the Court of Appeal (Butler-Sloss LJ, Judge LJ and Sir John Knox) unanimously held that it was not fatal to the claim that neither a moral claim nor a special circumstance was established.

The applicant was 58 when her father died. By the date of trial she was 69 (and, by the date of the appeal, 71). Her age was clearly a relevant factor. As Butler-Sloss LJ observed:

*'The facts found by the judge showed that the Plaintiff had been approaching the end of her working life at the death of her father and at the date of the hearing was 69 and had long retired. She no longer had an earning capacity or any hope of improving her condition in life. Although she lived with Mr Pearce she was not married to him and both were in modest financial circumstances, hers being described ... as stringent.'*

It was submitted by the appellants that the applicant's claim should fail, despite her circumstances, since no moral claim or special circumstance had been found by the judge. All three members of the Court of Appeal rejected this view. Butler-Sloss LJ said:

*'on the facts of this case, which ... were ... markedly different from the facts in Coventry, the judge was not obliged to find a special*

*circumstance, such as a moral obligation. He was entitled to look at all the relevant factors as enjoined under s. 3 and ... to make the decision that he did'* (periodical payments of £3,000 per annum, index-linked for life).

Judge LJ had this observation:

*'In my judgment Coventry cannot be regarded as authority for the proposition that unless an adult applicant in reasonable health is able to establish a moral obligation owed by the deceased the claim is bound to fail. Such a conclusion would be contrary to the terms of s. 3(1) (a)–(g). The decision in Re Coventry was considered in Jennings where Nourse LJ concluded that in the case of an adult son of the deceased who was fit and able to work, and in work, some "special circumstance, typically a moral obligation" was required ... The use of the word "typically" is revealing. Nourse LJ did not say "invariably" or "necessarily". If he had done so he would have been using language, which does not appear among the statutory criteria. Accordingly whilst accepting that a claim by an adult with an established earning capacity may very well fail if a moral claim or special circumstance cannot be established, in an appropriate case the court is entitled to conclude that the claim should succeed notwithstanding their absence.'*

Sir John Knox emphasised the balancing exercise which the court must carry out:

*'In the great majority of cases ... the court is involved in a balancing exercise among the many factors to which s3 of the 1975 Act requires the court to have regard ... In Coventry there was placed in the scales a factor of major weight ... that was that the Plaintiff was capable of earning, and was earning, his living. This meant that for the scales to be turned ... a factor of great weight would be needed in the opposite scale. Typically, the weightiest factor ... is present when there is found to have been a moral obligation... The reference ... [in Coventry] ... to the need for a moral claim is not the same as a finding that the scales would only tip in the Plaintiff's favour if it could be shown that the deceased was under a moral obligation. ... [The] argument that an adult child cannot make a successful application, unless he or she can establish a moral obligation or some other special reason... is only correct to the extent that it means that there must be some reason for the court to decide that the scales fall in favour [of the applicant]. So limited the submission is a truism which does not advance the argument ... Of course there has to be a reason justifying a court's conclusion that there has been a failure to make reasonable*

*financial provision but the use of the phrase "special circumstance" does not advance the argument. The word "special" means no more than what is needed to overcome the factors in the opposite scale.'*

Sir John Knox gave express approval to the way in which the matter had been approached by Ewbank J in *Re Debenham, deceased* [1986] 1 FLR 404 in which the judge had rejected a submission that special circumstances had to be found outside s. 3 before the claim which he was considering could succeed. He had commented that *Coventry* said:

*'that if a grown up man capable of working was going to make an application under the Act .. [the court] ... would look for special circumstances. So one would. But that is not a question of law, it is a question of applying common sense principles.'*

It is thus suggested that the law relating to a claim by an adult child may be summarised in the following propositions:

- (1) each claim must be decided by balancing the statutory criteria in s. 3;
- (2) the existence or non-existence of a moral claim is one of the relevant factors under s. 3(1)(d);
- (3) if the applicant is an adult with an earning capacity and earning his own living this will be a weighty factor against the success of a claim unless the existence of a moral claim or some other weighty factor can be demonstrated, sufficient to tip the scales in his favour. Necessitous circumstances alone will probably be insufficient. (Although, as Butler-Sloss LJ observed in *Snapes*, two members of the Court of Appeal in *Coventry* were clearly concerned that Oliver J may not have given sufficient weight to this factor.)

## CHANGE OF CIRCUMSTANCES

Sir John Knox commented in *Snapes* that the case was 'remarkable ... in the scale of alteration in the size of the testator's net estate' between the date of death and the date of trial. The facts were unusual.

When the testator died his estate was thought to be worth about £180,000. It consisted of his house, personal chattels and money, to an aggregate value of

£80,000; all of which he left, as the judge found reasonable, to his widow. In addition, there was a plot of land, used by the family business, which was valued for probate at £100,000. The business was run by the deceased's four sons and youngest daughter: the plaintiff did not have an interest in the business. The land was let by the deceased to the partners in the business and, by his will, the deceased specifically devised the land to them. Again the judge thought this was eminently reasonable. As Judge LJ observed: 'At the time when she first made a claim ... the claim would have failed'.

The trial judge had so held and this finding was not challenged on appeal. However, there was a dramatic change of circumstances in 1989. The partners in the business sold the land (together with adjoining land owned by them in their own right) to Tesco for £13m. The result was twofold:

- (1) the siblings who benefited under the will, already comfortably off from their interest in the business, became very wealthy; and
- (2) the net value of the land forming part of the deceased's estate was increased from £100,000 to £663,000 – there was, truly, a windfall.

As the Court of Appeal confirmed in *Snapes*, the court must, under s. 3(5), assess the position as it is known to be at the date of the hearing. The judge was, therefore, right to pay full regard to the size and nature of the net estate as it was known to be post-1989 and not as it was thought to be at the date of death and the date of the application.

It was submitted by the applicants that the court should disregard the increase in size of the estate which, it was submitted, could not have the effect of converting a 'bad' claim into a good one. Alternatively, it was said, the court should give little or no weight to this factor. Butler-Sloss LJ, giving the leading judgment, thought that neither argument could stand in the light of the 'clear words' of s. 3(5): 'the court shall take into account the facts as known to the court at the date of the hearing'. Judge LJ also found the words of s. 3(5) to be 'unambiguous'.

Although the Court of Appeal did not dissect the judge's balancing exercise, there is no doubt that the size and nature

of the net estate and the disparity in circumstances between the applicant and the appellant beneficiaries must have been weighty factors which, in the circumstances, were sufficient to tip the scales in the applicant's favour when taken together with the expression of wishes made by the testator (see below).

### TESTATOR'S WISHES

The testator in *Snapes* thought that the value of his estate was limited. He felt, reasonably, that he should leave the land to those running the business, so as not to disrupt it, and the rest to his widow. However, he provided in his will that, if his wife should predecease him, (which, in the event, she did not) the £80,000 left to her should be divided between the applicant, another daughter not involved in the business and his grandchildren. He also expressed the wish that, if his wife survived him, she should make provision for those persons on her death.

In *Coventry* Goff LJ opined that a view expressed by a deceased person that he wished a particular person to benefit will generally be of little significance, because the question which the court must address, i.e. 'was reasonable provision made?' is objective and not subjective. In *Snapes*, however, Butler-Sloss LJ said:

*'A good reason to exclude a member of the family has to be a relevant consideration ... [In] my view, the recognition by the testator of the status of members of his family and his goodwill towards them and in this case towards the plaintiff are factors which it is proper to take into account under s. 3(1)(8) and it is for the court to give such weight to those factors as may in the individual case be appropriate.'*

### DELAY


*Snapes* was described by Sir John Knox as a case 'remarkable in the length of the delay between the death of the testator and the date of the hearing'. The deceased died on 7 September 1985. The applicant made her application within the 6 months permitted by the act, but the case was not heard until the end of 1996, some 11 years later.

The long delay was suggested as being a reason why the increase in the size of the estate should be ignored. But the trial judge had considered the initial four year delay, during which the increase in the estate had occurred, and had acquitted the applicant of blame with regard to

this. There had been no material change of circumstances thereafter. The judge was not prepared to deprive the applicant of the award he was otherwise prepared to make in these circumstances, although he indicated that he may well have done so had he taken the view that the applicant had been at fault for the delay which had occurred prior to the Tesco sale.

The Court of Appeal agreed with the judge's approach with regard to this. It was, however, pointed out that the length of time a case takes to come to trial is a matter which the court may take into account under s. 3(1)(g), where appropriate, particularly if blame attaches to one of the parties and that results in a prejudice to the other.

### CONCLUSION

*Snapes* emphasises that every case in this field turns on its own facts. *Coventry* lays down a guideline in respect of adult children who have an earning capacity and who are in employment; in such cases the court is likely to require a moral claim or some other weighty reason before allowing a claim. This guideline, however, does not apply to other adult children, such as the applicant in *Snapes* who, for one reason or another, has no or no significant earning capacity. However, even in the case of an adult in his or her prime in full employment, it is clear that there is no rule of law barring out a claimant if a consideration of all the factors in s. 3 leads to the view that there are sufficiently weighty factors to justify the claim. Although not appearing in the judgments, Judge LJ in the course of argument, ventilated the case of the middle-class male in full employment who had relied upon a deceased parent to fund private school fees for the deceased's grandchildren. It may be that this would give rise to a 'moral claim' of some kind but it is suggested that, at least post-*Snapes*, it is not necessary to think in such terms. This is simply a relevant factor to weigh in the scales and it may well be that, in an appropriate case, it would be sufficiently weighty, as many other factors may be, to tip the scales in the adult child applicant's favour. It is the balancing exercise of all the statutory criteria which is, ultimately, all-important. 

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