Case No: F01PE449

IN THE COUNTY COURT AT PETERBOROUGH

Peterborough Combined Courts Centre
The Court House
Bridge Street
Peterborough
PE1 1ED

BEFORE:

RECORDER WILLIAMSON QC

BETWEEN:

LYNNE ROCHFORD **CLAIMANT**

- and -

***ILVA* ROCHFORD** **DEFENDANT**

Legal Representation
Mr James McKean (Barrister) on behalf of the Claimant
Ms Araba Taylor (Barrister) on behalf of the Defendant

Other Parties Present and their status
None known

Judgment

Judgment date: 2 February 2021
(start and end times cannot be noted due to audio format)

Reporting Restrictions Applied: No

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Recorder Williamson:

1. In these proceedings the Claimant, whom I will refer to as Lynne, claims under the Inheritance (Provision for Family and Dependants) Act 1975 which I will refer to as the Act, against the estate of her late father, Kenneth Rochford. I will refer to him as the Deceased.

2. The Defendant is the sister of the Deceased and I will refer to her as Ilva.

3. The Deceased made a will dated 13 September 2017 it names Ilva as Executrix and makes the following dispositions:

   i) £25,000 to Lynne.

   ii) £25,000 to the Deceased's sister, Felicity.

   iii) £2,000 to Lynne's son James; and

   iv) The remainder of the Deceased's estate to Ilva.

4. The Deceased's net estate is valued at circa £245,000. Ilva stands to receive approximately £193,000 less legal fees.

5. I shall set out the factual background briefly before turning to the law and the application thereof in this case.

6. I heard in evidence from Lynne and Ilva, both of whom were cross-examined at length. I thought that Lynne was on the whole an impressive witness who gave honest and credible evidence. Save where otherwise noted, I accept her evidence. Ilva, on the other hand, was a much more calculating witness, choosing her answers with care in order to advance her case. I found her a less satisfactory witness and in the event of conflict prefer the evidence of Lynne.

<u>The Factual Background</u>

7. The Deceased was born in 1934 and Ilva in 1945. Lynne was born in 1963. In 1968 the Deceased separated from Lynne's mother, Jennifer. After that date Lynne had, she says, and I accept, a difficult, even abusive, relationship with her father. He does not seem to have been an easy man."

8. In about the mid-1990s Lynne got together with her former partner Jon who had a young daughter Leila by a previous relationship. She is now in her early 30s and Lynne says, and I accept, has been treated by her as her own daughter since the age of about two. At about the same time the Deceased entered into a relationship with a woman called Audrey.

9. In 1998 Lynne gave birth to her son James. Shortly after this Lynne ceased work. At that time Lynne enjoyed a good standard of living and had a reasonably well-paid job. However, she was developing spinal degenerative disease. In about 1999 she gave up work and insurers, following extensive testing, accepted that she was unable to work. Since then Lynne has lived principally on the proceeds of an income protection scheme.

10. In about 2004 Lynne separated from her partner Jon. He continued to provide for James, including paying for private school fees.

11. In 2011 the Deceased made a will leaving a life interest to Audrey and his residual estate to Lynne. At about that time the Deceased moved to Lincolnshire from France where he had been living for some years and bought a house near to where Ilva lives.

12. As I have said, the Deceased was a difficult man and his relationship with Lynne was fraught. Matters came to a head just before Christmas 2016 when he wrote a letter to Lynne in the following terms:

> **"Dear Lynne,**
>
> **You must be aware that I have phoned you on a number of occasions but as usual you have ignored me by never returning any of them. This of course hurts and sending a Christmas card once a year does not compensate. When you rang me to say that James was unwell I did ask what I could do and you replied, "just be a dad" when you have never bothered to contact me. At the same time I mentioned that I had recently been in hospital and was recovering from a heart attack. I also told you that Audrey was very ill and I was doing my best to look after her. It is obvious to me that you could not care less and you had the front to tell me to be a dad. In the future I will not be sending any Christmas or birthday cards and do not wish to receive any as this would be hypocritical.**
>
> **Dad"**

13. In March 2017 the Deceased made a further will. He left his residual estate to Ilva, if she survived him, but if she predeceased him to Lynne. In April 2017 Audrey died.

14. In May 2017 Lynne sent a lengthy letter to the Deceased which indicated that she was seeking a rapprochement . However, in September 2017 the Deceased made his final will, which made the dispositions I have set out above. Moreover an attendance note of 31 July 2017 prepared by the Deceased's solicitors notes that:

> **"I advised Mr Rochford that if his daughter Lynne does not feel that reasonable financial provision has been left to her she could make a claim on his estate under the I(PFD) Act 1975. Mr Rochford said he was aware of this as he had received similar advice from Sills when he made his last will but he said that Lynne has had enough money from him over the years and keeps asking for more so he does not want to leave everything to her in his will. He said his sisters are aware of the situation with Lynne."**

15. In the remaining few months of his life, Lynne says and I accept, her relationship with her father grew closer. Indeed in July 2018 out of the blue he phoned her to tell her that he loved her. She told him that she loved him too.

16. The Deceased died on 14 August 2018.

The Law

17. As Mr Justice Marcus Smith pointed out in Martin v Williams [2017] EWHC 491 (Ch), the 1975 Act requires the Court to determine three questions.

18. The first is whether the Claimant has standing to apply to the Court for an order under section 2 of the Act. This is not in dispute here, Lynne is a child of the Deceased.

19. The second question is whether the Deceased's estate has made reasonable financial provision for the Claimant. As to the question of reasonable financial provision the speech of Lord Hughes at [16] to [20] in Ilott v Mitson [2018] AC 545 provides helpful guidance as follows (I will return to some aspects of Ilott in due course):

Reasonable financial provision
16. The condition for making an order under the 1975 Act is that the will, or the intestacy regime, as the case may be, does not "make reasonable financial provision" for the claimant (section 1(1)). Reasonable financial provision is, by section 1(2) , what it is "reasonable for [the claimant] to receive", either for maintenance or without that limitation according to the class of claimant. These are words of objective standard of financial provision, to be determined by the court. The Act does not say that the court may make an order when it judges that the deceased acted unreasonably. That too would be an objective judgment, but it would not be the one required by the Act.
17. Nevertheless, the reasonableness of the deceased's decisions are undoubtedly capable of being a factor for consideration within section 3(1)(g) , and sometimes section 3(1)(d) . Moreover, there may not always be a significant difference in outcome between applying the correct test contained in the Act, and asking the wrong question whether the deceased acted reasonably. If the will does not make reasonable financial provision for the claimant, it may often be because the deceased acted unreasonably in failing to make it. For this reason it is very easy to slip into the error of applying the wrong test. It is necessary for courts to be alert to the danger, because the two tests will by no means invariably arrive at the same answer. The deceased may have acted reasonably at the time that his will was made, but the circumstances of the claimant may have altered, for example by supervening chronic illness or incapacity, and the deceased may have been unaware of the full circumstances, or unable to make a new will in time. In re Hancock, deceased [1998] 2 FLR 346 illustrates another possibility. The deceased had acted entirely reasonably in leaving his business land to those of his children who were active in the business, but after his death part of the land acquired a development value six times its probate assessment, and, that being the case, there was a failure to make reasonable provision for another daughter who was in straitened circumstances. Thus there can be a failure to make reasonable financial provision when the deceased's conduct cannot be said to be unreasonable. The converse situation is still clearer. 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. In In re Jennings , for example, the deceased had unreasonably failed, throughout the minority of his son, the claimant, to discharge his maintenance obligations towards him. Many might say, as indeed the trial judge did, that this failure imposed an obligation on the deceased belatedly to provide for his son. But by the time of his death many years later the son had made his own successful way in the world and stood in no need of maintenance; his claim accordingly failed, correctly, in the Court of Appeal.

18. The right test was well set out by Oliver J in In re Coventry [1980] Ch 461 at 474-475 in a passage which has often been cited with approval since:
"It is not the purpose of the Act to provide legacies or rewards for meritorious conduct. Subject to the court's powers under the Act and to fiscal demands, an Englishman still remains at liberty at his death to dispose of his own property in whatever way he pleases or, if he chooses to do so, to leave that disposition to be regulated by the laws of intestate succession. In order to enable the court to interfere with and reform those dispositions it must, in my judgment, be shown, not that the deceased acted unreasonably, but that, looked at objectively, his disposition or lack of disposition produces an unreasonable result in that it does not make any or any greater provision for the applicant - and that means, in the case of an applicant other than a spouse for that applicant's maintenance. It clearly cannot be enough to say that the circumstances are such that if the deceased had made a particular provision for the applicant, that would not have been an unreasonable thing for him to do and therefore it now ought to be done. The court has no carte blanche to reform the deceased's dispositions or those which statute makes of his estate to accord with what the court itself might have thought would be sensible if it had been in the deceased's position."
19. Next, all cases which are limited to maintenance, and many others also, will turn largely upon the asserted needs of the claimant. It is important to put the matter of needs in its correct place. For current spouses and civil partners (section 1(2)(a) and (aa)), need is not the measure of reasonable provision, but if it exists 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. Need, plus the relevant relationship to qualify the claimant, is not always enough. In In re Coventry the passage cited above was followed almost immediately by another much-cited observation of Oliver J:
"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."
20. Oliver J's reference to moral claim must be understood as explained by the Court of Appeal in both In re Coventry itself and subsequently in In re Hancock , where the judge had held that there was no moral claim on the part of the claimant daughter. There is no requirement for a moral claim as a sine qua non for all applications under the 1975 Act, and Oliver J did not impose one. He meant no more, but no less, than that in the case of a claimant adult son well capable of living independently, something more than the qualifying relationship is needed to found a claim, and that in the case before him the additional something could only be a moral claim. That will be true of a number of cases. Clearly, the presence or absence of a moral claim will often be at the centre of the decision under the 1975 Act.

20. The third question, if the Court is satisfied that reasonable financial provision has not been made is to consider what provision should be made. This is a discretionary exercise taking into account the factors set out at section 3 of the Act. Although a large number of cases were cited to me where different judges have come to widely varying conclusions with regard to various cases, it seems to me that many of these

decisions are fact specific. One cannot safely extrapolate from the facts of one case to another. Regard must always be had, first and foremost, to the wording of the Act.

21. For present purposes the critically important parts of the Act are sections 2(1) and 3(1), which provide as follows, so far as material:

2 Powers of court to make orders.
(1) Subject to the provisions of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:—
(a)an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;
(b)an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;
(c)an order for the transfer to the applicant of such property comprised in that estate as may be so specified; …
3Matters to which court is to have regard in exercising powers under s. 2.
(1)Where an application is made for an order under section 2 of this Act, the court shall, in determining whether the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say—
(a)the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
(b)the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;
(c)the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
(d)any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;
(e)the size and nature of the net estate of the deceased;
(f)any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;
(g)any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

22. I turn then to the matters to which I am obliged to have regard under section 3(1). Factor (a) is the financial resources and financial needs which the Applicant has or is likely to have in the foreseeable future.

23. Factor (a) is the financial resources and financial needs which the Applicant has or is likely to have in the foreseeable future.

24. Lynne's income is approximately £2,000 per month. She was cross-examined in considerable detail about her spending. Although there were some areas of confusion, it seemed to me that Lynne's spending was overall modest and reasonable. That is not surprising since her income is approximately equivalent to the median earnings for the UK as a whole. She also owns outright a three-bedroom flat purchased in 2016 for £497,000. The current value of that flat is not known and I will return to that point in a moment.

25. All in all, I consider that Lynne can presently live in reasonable comfort, albeit not luxuriously. However, in January 2023 she turns 60 and her income protection plan ceases. At that stage she will suffer what the Defendant's Counsel rightly described as a catastrophic drop in income. In fact between 2023 and 2030, when her State Pension entitlement arises, she will have an income of about £1,000 per year.

26. For that seven year period Lynne will therefore have an annual shortfall of approximately £20,000 per year, the difference between her modest and reasonable expenditure and her virtually non-existent income. That shortfall of approximately £140,000 seems to me to engage paragraph (a) and to meet the test identified by Mr Justice Oliver, as he then was, in Re Coventry [1980] (Ch) 461 at [474] namely that:

> "Looked at objectively the disposition or lack of disposition produces an unreasonable result."

Re Coventry was approved in that respect in Ilott.

27. Beyond 2030 however, I am unable to conclude that factor (a) is engaged.

28. My difficulty is that it is not obvious that Lynne's financial position in the period beyond 2030 allows the Court to determine what her resources and needs are. It is not "the foreseeable future" as contemplated by (a) for a number of reasons.

29. Firstly Lynne will at that point acquire her State Pension but the rate of the same is unknown. Secondly and more significantly, Lynne should by then be able to downsize and sell her flat releasing a significant capital sum. At the moment the value and saleability of the flat are difficult to judge. The block has cladding on it which is potentially combustible. In the light of the Grenfell fire such properties are presently hard to sell but it is likely that these issues will have been resolved by 2030. Thirdly Lynne's mother, who was diagnosed with dementia in 2017 and who will by then be in her 90s, may well have died and made provision for Lynne. Fourthly, by then Lynne's stepdaughter and son should be well established in their careers and perhaps have families of their own. In short, in my view it is impossible to apply paragraph (a) to the period after January 2030.

30. Lynne also seeks to say that I should bring into account the capital cost of a replacement car and the fees which she may incur in pursuing an art course. I do not consider that these constitute "financial needs" within the meaning of paragraph (a).

31. Of more difficulty is the fact that depending on the outcome of the litigation, Lynne may incur a success fee of approximately £60,000. This will form a debt and therefore looking at her financial resources as a whole, might be said to be relevant.

32. As regards to the success fee, I accept that in the light of the recent decision of Mr Justice Cohen in Re H [2020] EWHC 1134 (Fam) at [48] to [60], such a fee is in principle to be taken into account when assessing a Claimant's needs. I would prefer this decision to that of Deputy Master Linwood in Re Clarke [2019] EWHC 1193 (Ch) at [192] to [196].

33. In summary therefore I conclude that Lynne has a shortfall of approximately £140,000 between 2023 and 2030 and that in addition some allowance needs also to be made for her liability for the success fee of £63,000.

34. Taking all those matters into account, it seems to me that in accordance with the approach suggested at [15] of Ilott it is appropriate to make an award of a capital sum. In that regard I have been referred to the approach set out in the Duxbury tables. However, since I do not think that we are here concerned with a lifetime nett annual income these tables are of limited assistance.

35. Factor (b) is not relevant here.

36. Factor (c) is the financial resources and financial needs which any beneficiary of the estate of the Deceased has or is likely to have in the foreseeable future.

37. Ilva's financial position is reasonably comfortable. She owns her own house in Lincolnshire, mortgage free. She has a State Pension and a reasonable private pension. She also owns an adjoining field of approximately three acres. She has no dependants or foreseeable financial commitments. She is 75 years of age.

38. In that connection factor (c) therefore has little weight. Indeed, any inheritance which Ilva receives may properly be regarded as a "windfall" see Wellesley v Wellesley [2019] EWHC 11 (Ch) at [179].

39. Factor (d) is any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiaries of the estate of the Deceased.

40. Again, I think this is of little weight in this case. The Deceased clearly had no obligations or responsibilities to Ilva. As regards Lynne it is said that the Deceased made promises along the lines that:

> **"One day this will all be yours."**

I do not consider this to have given rise to an obligation or responsibility.

41. Factor (e) the size and nature of the estate is clearly of importance. After allowing for the existing dispositions and legal fees the estate is, as I have said, worth about £190,000.

42. It is clearly not therefore possible to make provision for Lynne in accordance with her resources and needs without effectively exhausting the estate. Any award to Lynne must therefore reflect the modest size of the estate and I will come back to that point in due course.

43. Factor (f) is any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the Deceased.

44. This is a very important factor in this case. As I have said, Lynne has been unable to work since the age of about 36. At that time, she had a salary of approximately £30,000 a year plus commission and a car. But for her poor health she would, no doubt, have been able to carry on working until at least the age of 60 and would have built up a much better pension pot.

45. The uncontested medical evidence is that she suffers from significant spinal degenerative disease. Mr Sinar, the consultant neurosurgeon whose report is before me, states that:

> **"The result of her spinal degenerative disc disease and her other medical problems mean that she has to rely on her son to perform tasks such as carrying the shopping upstairs from the car and also perform cleaning around the flat. This is likely to persist. In addition by the very nature of the disease, ie, that it is degenerative, this will worsen with the passage of time so that she will not get any better than she currently is and it is highly probable that her symptoms will deteriorate over the next few years so that she will have to rely on others to help her with housework and perform shopping etc. With regard to her ability to obtain remunerative employment, in my opinion she will not be able to work in any capacity and it is unlikely that an employer will offer her a position."**

46. I turn finally to factor (g) which is any other matter including the conduct of the Applicant or any other person which in the circumstances of the case the Court may consider relevant.

47. In this respect I bear in mind Lord Hughes' observation at [20] of Ilott that:

> "In the case of a claimant adult son well capable of living independently, something more than the qualifying relationship is needed to found a claim."

This obviously applies to adult daughters as well.

48. In this case, Lynne, if she had been able to carry on working until 60 or 65 in reasonably well-paid employment would have had little prospect of satisfying the statutory test. But she was not.

49. In addition Lynne, as I find, made every reasonable effort to keep in touch with her father despite his clearly being a difficult man and despite her unhappy relationship with him from childhood onwards. All this does in my view give Lynne something of a moral claim and Lynne was of course the Deceased's only child.

50. Taking all these factors into account I conclude that the Deceased's Will did not make reasonable financial provision for Lynne.

51. I therefore consider that I should exercise my powers under section 2 of the Act. Taking into account those powers and the section 3(1) criteria I think that the appropriate order is a Lump Sum Order under section 2(1)(b) of the Act.

52. Taking into account all the matters I have set out above, it seems to me that the appropriate order is that there should be a lump sum payment of £85,000 in addition to the existing disposition of £25,000. That figure of £85,000 reflects my views as to Lynne's financial resources and needs, but those needs exceed by far what can be met out of the estate. This figure of £85,000 therefore reflects those resources and needs but also reflects the relatively small size of the estate.

53. As regards costs, the Claimant submits that costs should be on the indemnity basis in relation to two periods, effectively for the whole of the periods of the litigation. First of all up to 13 September when a Part 36 offer was made and not accepted and then thereafter.

54. Dealing with the first period, the basis of the application for indemnity costs is that the Claimant made an early offer to mediate which was rebuffed for more than a year. It is said on behalf of the Defendant that she was justified in refusing mediation because she had concerns about the adequacy of the Claimant's disclosure of documents relating to her financial position. I do not find that persuasive. It seems to me that what is essentially a family dispute of this kind with a relatively modest estate, it was clearly very much in the interests of all concerned that there should be a mediation at the earliest possible opportunity and that the parties should seek to resolve their family differences without involving the courts.

55. The Defendant did not take that course and it seems to me that she must bear the costs consequences of it. I would add that having read, at the invitation of Counsel, the file of without prejudice save as to costs material which obviously I had not read when I delivered my judgment, it does seem to me that overall, the Defendant through her solicitors took a somewhat high-handed approach to these proceedings which has no doubt contributed to the length of them and the costs incurred.

56. In relation to the period from 13 September onwards. It is the case that a formal Part 36 offer was made on behalf of the Claimant on 21 August and was not accepted. That Part 36 offer was in the amount of £56,000 which is less than the sum which in the event I awarded. So it seems to me that in relation to that period, Rule 36.17 is engaged and in consequence of which in accordance with 36.17(4)(b) costs must be awarded on the indemnity basis.

57. As regards (a) and (c) of that provision, I think that it is right that interest should be awarded at a rate in excess of the base rate. Although I agree with Ms Taylor that in the light of the very low interest rates which have been prevailing throughout these proceedings 10% above base rate would not be appropriate and I therefore award interest at the rate of 5% both on the principal and on the costs.

58. As regards (d) that allows the Court to order an additional amount on the principal of 10% and, as I read the rules, the Court is obliged to order that additional amount of 10% unless it considers it unjust to do so. I do not consider it unjust to do so on the facts of this case because, as I have already indicated, this is a case that should have been resolved within the family long ago. It has not been, it has come to Court. The Claimant has made a number of reasonable offers and those have all been rebuffed and

the mediation, when it occurred, was far too late by which time costs had already been incurred on a substantial scale and therefore, I think that the 10% should be awarded.

59. All of that will give rise to a number of calculations which I hope Counsel can make and agree.

60. The Claimant is clearly entitled to a payment on account. The costs schedule which has been put before me comes to a grand total of nearly £130,000 which on the face of it, for this relatively modest dispute, does appear to be an exceptionally high figure. There may be reasons why it is appropriate and I will take into account also that costs have been awarded on the indemnity basis but even so I think the proper course is to award only 50% of that amount which I will round down to £60,000.
