Claim No J10CL328

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 22 September 2023

Before :

HIS HONOUR JUDGE MONTY KC

- -

Between :

MALINI NANDAKOPAN

Claimant

- and -

ABIRAMI NANDAKOPAN
(as personal representative and beneficiary of the estate of
Kanapathipillai Nandakopan deceased)

Defendant

- -

Mr Andrew Morrell (instructed by **Duncan Lewis Solicitors**) for the **Claimant**
Mr Rupert Coe (instructed by **McCarthy Denning**) for the **Defendant**

Hearing dates: 11 and 12 September 2023

- -

Approved Judgment

HHJ Monty KC:

Introduction

1. On 29 February 2020, Mr Kanapathipillai Nandakopan died intestate. He had married the Claimant on 28 January 1993, and they had one child, a daughter, who is the Defendant in this claim. She was born on 13 November 1993. Sad to say, the marriage was not a happy one, and following divorce proceedings initiated by the deceased in April 2018, the marriage came to an end when decree absolute was issued on 20 January 2020, just a few weeks before the deceased died. As a result, and in accordance with the provisions of the Administration of Estates Act 1925 (which deal with inheritance on an intestacy), the Defendant received the deceased's entire estate. The Defendant is also the personal representative of the deceased's estate, which comprised money in various bank accounts and the proceeds of a life insurance policy. The value of the estate is now said to be around £120,000.

2. The Claimant has brought a claim under the Inheritance (Provision for Family and Dependants) Act 1975. References to sections in this judgment and to "the Act" are to the 1975 Act unless otherwise stated.

3. There are two main issues in the claim.

4. First, what is the extent of the deceased's estate? This arises because by a transfer registered in September 2014 the deceased had transferred a property, 49 Eastcote Avenue, South Harrow, Middlesex, from his sole name into the names of the deceased and the Defendant. The TR1 which was signed by the deceased and the Defendant contains an express declaration of trust, pursuant to which they held the property as joint tenants. Thus, upon the deceased's death, his share in the property went to the Defendant. The property had been the matrimonial home since it was bought by the deceased in 1996. However, in this claim the Claimant asserts that the transfer was (in the words of section 10) a disposition intended to defeat her application for financial provision, and should thus be treated as forming part of the deceased's estate. Alternatively, the Claimant asserts that under section 9, the deceased's half share in the property should form part of his estate. It is agreed that the property is worth £450,000.

5. It had appeared from the agreed case summary and from the Claimant's counsel's skeleton argument that certain money given by the deceased to the Defendant was also under challenge and that it was alleged that money should also be clawed back into the net estate, but it was conceded at trial that the only issue in this regard was in relation to the property.

6. Secondly, should an order be made under the Act in favour of the Claimant? This involves a consideration of several sections of the Act, in particular the matters to which the court is to have regard when exercising its powers to make orders under section 2. Those matters are set out in section 3. The principal point on this second issue is, as I shall set out in more detail below, the financial needs and resources of the Claimant and the Defendant.

7. In brief summary, the position is this. The Claimant owns property in Sri Lanka, worth around £238,000, and the Defendant also asserts that the Claimant is likely to inherit

further family property there, or at least a share in it, at some point, which will be worth a further £120,000. The Defendant received a number of cash payments from the deceased during his lifetime, in excess of £100,000, as well as having benefited from the deceased's generosity to her as she progressed through her school and university education. Whether the property (or part thereof) is to be treated as being within the estate, or whether it is not and is therefore wholly owned by the Defendant, will impact on this point.

8. I must start by sincerely thanking both counsel. Mr Morrell appeared for the Claimant, and Mr Coe for the Defendant. They both steered a careful course through what is a highly charged and emotional history for the parties, and avoided any inappropriate questioning of the parties in cross-examination, which was thorough and polite at all times. I am also very grateful to them for their skeleton arguments (although they were both served and filed late, which is unfortunately becoming an increasing trend in this court, and which is to be deprecated – directions set out a date for skeleton arguments so that the judge can start reading into the case and understanding what it is about, and where skeleton arguments are late, it severely impacts on the ability to pre-read and prepare for trials and other hearings), for their oral submissions, and for their supplemental written submissions (the need for which arose after trial, as I will mention below). Whilst I may not have mentioned every point raised by counsel, I have taken them all into account when preparing this judgment.

A brief background

9. Before turning to the provisions of the Act and the principles involved in a claim under the Act, I need first to set out some of the history in more detail. Most of this is taken from the evidence in this case; the Claimant has produced 5 witness statements, and the Defendant 3 witness statements, and both gave oral evidence at the trial. I have also drawn from the witness statements in three other proceedings, namely (a) a claim brought by the Claimant against the deceased and the Defendant in 2017 for a non-molestation order and an occupation order ("the 2017 proceedings"); (b) the divorce proceedings in 2018 ("the divorce proceedings"); and (c) a further claim brought by the Claimant against the Defendant in 2020, also seeking a non-molestation order and an occupation order ("the 2020 proceedings").

10. The deceased and the Claimant were both born in Sri Lanka, in 1960 and 1965 respectively. The deceased was living in London when the parties were married (I think in Sri Lanka; it was an arranged marriage) on 28 January 1993. Following the marriage, the couple came to live in London.

11. The deceased had a successful career as an IT consultant.

12. Save for a period between 1997 and 1999, the Claimant did not work.

13. The Claimant brought a dowry to the marriage, from her parents, which she says was worth around £25,000.

14. Apart from that, and apart from whatever earnings the Claimant received during the brief period when she was working, the family was financially supported entirely from the deceased's income. The family was also in receipt of child benefit.

15. The Claimant also owned property in Sri Lanka at the time of the marriage, which she was gifted by her parents. There is an apartment in Colombo which is now worth around £38,000, and some land which is now worth around £200,000 (these values are derived from Sri Lankan property valuations obtained pursuant to a court order, and whilst the Claimant herself thought the valuations were excessive, they were accepted as being accurate on her behalf at trial). The Claimant's family also owns some commercial property in Sri Lanka which is valued at around £360,000 (also valued independently), and a Power of Attorney from 2005 permits the attorney (one of the Claimant's sisters) to give the land or any part of it to one or more of a number of named individuals, who are the Claimant and her siblings. As I have earlier indicated, there is a question over whether the Claimant is now likely to get any of that commercial property.

16. The Defendant was born on 13 November 1993. She was the only child of the marriage. The deceased was very generous towards his daughter as she grew up. He paid for private education, he paid for some of her accommodation costs whilst at university and during her post-graduate studies, he paid her around £50,000 in cash (which was said to be made up of the child benefit payments and other savings), he paid off her student loans, and he gave her money for a car when she got her first job. In total, as the Defendant accepted, he gave her over £100,000 in cash payments during his lifetime.

17. According to the deceased's witness statement in the divorce proceedings, by the time he bought the property (which became the matrimonial home) in June 1996, their family life was not a happy one. In May 1996, the Claimant went with the Defendant (who was then just over 2 years old) to Sri Lanka (where her mother and one of her sisters lived, and indeed still live) and then to the USA (where the Claimant's other sister and her brother live) and they did not come back to London until January 1997. In her evidence, the Claimant said that this was because the deceased wanted them all to move back to Sri Lanka, and he bought her the air tickets, but I have to say that in light of the fact that he was in the process of buying the property at the time, I think that is unlikely.

18. In any event, it is accepted by the Claimant that the marriage was unhappy. The Claimant alleged that the deceased was abusive towards her, and that save for a brief period when he gave her a small allowance, he did not give her any money. The deceased said in his witness statement in the 2017 proceedings that the Claimant was abusive towards him. The Defendant said that her father was right, and she said that although she tried hard to have a relationship with her mother until she was around 16 (which would have been in about 2009), she gave up; she described her father as having provided her with the only emotional and financial support she ever received, and blames her mother for the awful atmosphere at home.

19. It is, I think, not for me to apportion blame for the failure of this marriage, and both counsel agreed that I do not need to make any findings of fact in that regard, but as I shall go on to consider, the contribution by the Claimant to the welfare of the family is one of the matters which the Act requires me to take into account.

20. It is accepted by the Claimant that the marriage, whilst long, was unhappy. She says that she was the home-maker for 14 years (that would have been from 1993 until 2007) and that the marriage really deteriorated after 18 years (which would have been in

around 2011) at which point she says that there was discussion about divorce. She also said in the divorce proceedings that in around 2013 or 2014 she was asked by the deceased to sign divorce documents and an agreement not to make a claim on the property, but she refused. The deceased had denied that he had done any such thing. He said that separation was not considered at that time and that he only initiated the divorce proceedings following the 2017 proceedings. Again, I was not asked to make any findings about any of that.

21. In September 2014, as I have noted, the property was transferred into the names of the deceased and the Defendant as joint tenants. There was a dispute between the Claimant, the deceased and the Defendant (in the context of the divorce proceedings) as to whether the Claimant was aware of the transfer at the time. The deceased and the Defendant said that she was, but the Claimant says she was not. This question did not feature in the witness statements in the present claim, and again I was not asked to make any findings about when the Claimant first became aware of the transfer. It is clear that she was aware of it by the time of the 2017 proceedings, because her statement in those proceedings refers to her being aware that both names were on the title register.

22. Certainly by 2017 (and for several years prior to that) the marriage had irretrievably broken down. According to the Claimant, there had been no sexual relationship since 1995, there had been no family holidays since 2001, since 2011 there was no family life or family function, she and the deceased hardly communicated since 2013-14, and the Claimant had paid for her own food and essentials since 2011. The Claimant also says that the deceased insisted she pay him £200 per month.

23. The Defendant's evidence was that she could not remember a time when her parents were happy, and she described her mother as cold and verbally, emotionally and physically abusive (which the Claimant denies). At some point, the Claimant had started sleeping in the living room.

24. Reading all of the statements (in these and the other proceedings) one gets a sense of intense unhappiness which increased as the years progressed, and a clear understanding of why the relationship between the Claimant and Defendant is now one of extreme bitterness.

25. On 26 June 2017, the Claimant made a statement in the 2017 proceedings in which she confirmed that she was seeking (amongst other orders) an order that neither the deceased nor the Defendant should be allowed to return to the property or come within 100 metres of it. In her cross-examination at trial, the Claimant said that she could not have made such an application, because the deceased was the owner of the property, and maintained that position even when she was shown her application (which sought that relief) and her witness statement (which also asked for those orders). The fact is that she did seek those orders, and the 2017 proceedings were compromised on undertakings being given which did not involve the deceased or the Defendant leaving the property.

26. The divorce proceedings followed, in 2018. They were unsurprisingly acrimonious.

27. In the course of the financial remedy proceedings, to which the Defendant was joined as a party because of her joint legal ownership of the property, the Claimant made an

application under section 37 of the Matrimonial Causes Act 1973, seeking to set aside the 2014 transfer of the property. She also sought an order that monies paid by the deceased to the Defendant during his lifetime should be added back into his estate. None of the financial aspects of the divorce were finalised by the time of the deceased's death.

28. Decree nisi was pronounced on 23 April 2019, and decree absolute on 20 January 2020.

29. The deceased suffered a seriously debilitating stroke in October 2019, and he was left unable to communicate, although the Defendant said he could recognise her when she visited him. At some point, he lapsed into a coma from which he never recovered. He died on 29 February 2020. He was only 59 years old.

30. The decree absolute appears to have been sought, and granted, at a time when the deceased was in a coma, but it may be that before his stroke he had given instructions to his solicitors (as the Defendant said was the case). Nothing turns on this as no point is taken on it by the Claimant (and nor did she take any such point in relation to the divorce proceedings, perhaps because of the timing as things happened very quickly), but it is a curiosity.

31. In any event, the effect of the deceased's death was that (a) the financial remedy proceedings, including the section 37 application, came to an end (the court's power to order financial relief can only be exercised as between living parties to a former marriage – see *Unger v Ul-Hasan* [2023] UKSC 22); (b) the deceased's half share in the property passed to the Defendant as the surviving joint tenant; and (c) because he did not leave a will, the Defendant inherited the deceased's estate. The Claimant received nothing from his estate on the deceased's death, because the decree absolute had brought the marriage to an end; again, see the provisions of the Administration of Estates Act 1925.

32. The Claimant then applied again for injunctive relief against the Defendant, in the 2020 proceedings. As before, cross-undertakings were given which allowed them both to remain living in the property, but in January 2022 the 2020 proceedings were dismissed, and the Claimant was ordered to leave the property. She moved to Sri Lanka.

33. The present claim was commenced on 21 September 2021. As I have indicated, in the Claim Form the Claimant seeks orders under the Act (a) for reasonable financial provision from the estate, (b) an order under section 9 that the deceased's share in the property be treated as part of the estate, and (c) an order under section 10 that the Defendant makes available such sum as the court considers fit for the purposes of making an order for reasonable financial provision in the Claimant's favour.

The Act and the approach to what is "reasonable financial provision"

34. The scheme of the Act (and I shall paraphrase some of the sections) starts with section 1(1). Where a person dies domiciled in England and Wales and is survived by any of the persons set out in section 1(1)(a) to (e), that person may apply for an order for financial provision under section 2:

> "on the ground 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."

35. In the case of an application by the spouse of the deceased, section 1(2)(a) states that "reasonable financial provision" means:

> "such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance."

36. In the case of an application by a former spouse, section 1(2)(b) states that "reasonable financial provision" means:

> "such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance."

37. Under section 14, the court has the power to treat a former spouse as if the divorce order had not been made, if the court thinks it is just to do so:

> "The effect of section 14 is to allow the decree of divorce to be disregarded if (a) the other party to the marriage dies within 12 months from the date of divorce and (b) at the time of death no financial order under the 1973 Act has yet been made. Where these conditions are met, the divorced former spouse has the same right under the Inheritance Act as a spouse who is still married at time of death to apply for reasonable financial provision going beyond what is required for his or her maintenance: see section 1(2)(b)."

See *Unger v Ul-Hasan* [2023] UKSC 22 at [137].

38. In other words, the court applies section 1(2)(a) rather than 1(2)(b). In the present case, it is accepted that the Claimant should have the benefit of section 14 and the test should be that in section 1(2)(a).

39. There is a wide range of orders which the court can make under section 2. These include orders for the payment of lump sums, for periodical payments, for the transfer of property and so on.

40. Section 3 sets out the matters to which the court is to have regard when making an order under section 2

> "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".

41. These matters are:

> "(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."

42. Section 3(2) applies, without prejudice to the generality of section 3(1)(g), where (as is the case here, because of the effect of section 14) an application for an order is made by virtue of section 1(1)(a):

> "The court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—
>
> (a) the age of the applicant and the duration of the marriage or civil partnership;
>
> (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family."

43. Part of the process in the present case (an application by a former spouse who is treated as a spouse for the purposes of the application, because of section 14) involves what is often referred to as the "divorce cross-check", which is set out in section 3(2):

> "In the case of an application by the wife or husband of the deceased, the court shall also, unless at the date of death a judicial separation order was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a divorce order; but nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2."

44. The principle behind this is that in general a surviving spouse (or civil partner) should not be worse off if the marriage ended when their partner died rather than on divorce.

45. Section 10 is headed "Dispositions intended to defeat applications for financial provision". Section 10(1) provides as follows:

> "(1) Where an application is made to the court for an order under section 2 of this Act, the applicant may, in the proceedings on that application, apply to the court for an order under subsection (2) below.
>
> (2) Where on an application under subsection (1) above the court is satisfied—
>
> (a) that, less than six years before the date of the death of the deceased, the deceased with the intention of defeating an application for financial provision under this Act made a disposition, and
>
> (b) that full valuable consideration for that disposition was not given by the person to whom or for the benefit of whom the disposition was made (in this section referred to as 'the donee') or by any other person, and
>
> (c) that the exercise of the powers conferred by this section would facilitate the making of financial provision for the applicant under this Act, then, subject to the provisions of this section and of sections 12 and 13 of this Act, the court may order the donee (whether or not at the date of the order he holds any interest in the property disposed of to him or for his benefit by the deceased) to provide, for the purpose of the making of that financial provision, such sum of money or other property as may be specified in the order."

46. The focus in the present case will be on whether the transfer of the property in 2014 was made by the deceased "with the intention of defeating an application for financial provision under this Act".

47. It is accepted that full valuable consideration was not given by the Defendant, and that the exercise of the powers conferred by section 10 would facilitate the making of financial provision for the Claimant.

48. It is also common ground that the search is for the deceased's subjective intention, and that the burden of proof here is on the Claimant.

49. Further, it is accepted that the transfer was within 6 years of the deceased's death (the period was in fact 5 years and 7 months).

50. The operation of section 10 is expressly subject to sections 12 and 13. Section 13, headed "Provision as to trustees in relation to ss 10 and 11", has no application to the present case.

51. Section 12 contains "Provisions supplementary to ss 10 and 11". I need to set out the following parts of section 12:

> "(1) Where the exercise of any of the powers conferred by section 10 or 11 of this Act is conditional on the court being satisfied that a disposition or contract was made by a deceased person with the intention of defeating an application for financial provision under this Act, that condition shall be fulfilled if the court is of the opinion that, on a balance of probabilities, the intention of the deceased (though not necessarily his sole intention) in making the disposition or contract was

> to prevent an order for financial provision being made under this Act or to reduce the amount of the provision which might otherwise be granted by an order thereunder."
>
> "(3) Where the court makes an order under section 10 or 11 of this Act it may give such consequential directions as it thinks fit (including directions requiring the making of any payment or the transfer of any property) for giving effect to the order or for securing a fair adjustment of the rights of the persons affected thereby."

52. The editors of Inheritance Act Claims, 3rd Edition, say at paragraph 7.5:

> "Without doubt, establishing the requisite intention on the part of the deceased will be the most difficult hurdle which the claimant will face when seeking to make an application under s.10."

53. There is relatively little guidance as to how the court should approach the question of the deceased's intention for the purposes of section 10. Some cases on intention are set out in Inheritance Act Claims, 4th Edition, at paragraphs 3-054 to 3-058, and the summary of two of those cases in paragraphs 54 to 55 below is largely taken from that text book.

54. *Kennedy v Official Solicitor* [1980] CLY 2820 was a decision of HHJ Willis sitting in Shoreditch County Court. There is no transcript of the judgment available, and the case report is extremely brief. The deceased and the applicant had been married for 29 years when he deserted her and went to live with a third party, M. Seven years later, he transferred his leasehold house to M in consideration of natural love and affection. The deceased later made a will leaving M his entire estate. The applicant filed for divorce, but the deceased died before a decree nisi was granted (and M died intestate a few months later). The application for an order under section 10 was dismissed. The short report of the decision says it was held that:

> "it was not essential to show that the deceased had the existence of or the provisions of the 1975 Act present to his mind when the impugned transaction was made, but there must be evidence that the deceased intended to defeat a claim made after his death against his estate."

55. In *Dawkins v Judd* [1986] 2 FLR 360, the applicant and the deceased had each been married before; the applicant had two sons, and the deceased a daughter, by their respective earlier marriages. During their marriage, they lived in the deceased's house, and some 15 months later he made a will leaving her £8,000 and a life interest in the house. He later transferred the house to his daughter for £100. There would have been nothing in the estate with which to satisfy the legacy to the applicant; but, shortly before his death, he made a will leaving his entire estate to his daughter. The applicant claimed under s.10 for a payment out of the proceeds of sale of the matrimonial home. Bush J was satisfied that the sale of the house to the daughter was made with the intention, if not the sole intention, of defeating a claim under the 1975 Act. I have not been able to find a copy of the judgment.

56. In *Dellal v Dellal* [2015] EWHC 907 (Fam), a decision of Mostyn J, it was held at [11]:

> "The motive does not have to be the dominant motive in the transaction; if it is a subsidiary (but material) motive then that will suffice".

57. The question of intention was also considered in *Sismey v Salandron* [2021] WLUK 372, a decision of HHJ Emma Kelly sitting as a High Court Judge. The case concerned (amongst other things) the provisions of section 11, and whether a deed of covenant was made with the intention of defeating an application for financial provision under the Act. The issue of intention was thus the same as that under section 10, although in section 11 cases, headed "Contracts to leave property by will", there is under section 12(2) a statutory presumption that where no valuable consideration was given, "it shall be presumed, unless the contrary is shown, that the deceased made that contract with the intention of defeating an application for financial provision under this Act." As it happens, the Judge held that the presumption did not arise in that case. As was said in *Sismey* at [69], intentions can be mixed, and the transferor (the deceased) might have had a number of intentions. If one of those intentions was to defeat a claim for financial provision, and that intention was material, it will be sufficient.

58. *Sismey* was not cited to me by either side; I emailed a copy of the judgment to counsel, having come across it when thinking after the conclusion of the trial about the intention issue, and invited written submissions on it. I have received those submissions and have taken them into account.

Issue 1: the extent of the estate for the purpose of this claim

(1) Intention and section 10 in the present case

59. At paragraph 27 of her statement in these proceedings, the Defendant says this:

> "Whilst the Claimant does her best to unfairly impugn my dad's motivations, I cannot recall my father ever going to see divorce lawyers in 2014, nor indeed before then. If he had, I am certain he would have told me. On any basis, the transfer cannot be said to be of an unusual nature given that I was his only child, and for whom he naturally wanted to leave a legacy. Particularly so, given his ill health at the time. My father had been diagnosed with diabetes and had lifelong mobility issues as a consequence of childhood polio, all in addition to high stress he was suffering as a result of the Claimant's behaviour. Sadly for me, it is his health that eventually failed him."

60. In my view, this part of the Defendant's evidence unfortunately morphs without any distinction from factual to opinion evidence. The Defendant accepted in oral evidence that she did not really discuss her father's intentions with him at all and that the sentence starting "On any basis" was really just speculation. She could not really explain why she had used the phrase "leave a legacy". I do not think I can place any weight on this evidence as showing what the deceased's intention was, although the reference to leaving a legacy is of interest.

61. In her oral evidence, the Claimant confirmed that her position remained as she had set out in her evidence in the divorce proceedings, that the "sole purpose and intention" for the transfer was "to defeat my interest and claim for a share following a divorce."

62. I am not persuaded that I should take from that evidence that it was in some way being conceded that the deceased's sole intention was in relation to the divorce proceedings, or (as Mr Coe submitted) that the Claimant's position in the present claim represented an opportunistic change of position.

63. In my judgment, the most helpful evidence about the deceased's intentions was what he himself had said.

64. First, in Replies to the Claimant's request for further information in the divorce proceedings, given by the deceased's solicitors but presumably on instructions, it was said:

> "The Applicant [in context, the deceased] confirms that the purpose of the transfer was to enable the parties' daughter to carry on paying the mortgage on the Former Matrimonial Home and continue to reside at the property, should the Applicant's health take a turn for the worse and render him unable to work or make the payments. The Applicant's blood pressure has continued to increase due to the stress of family life, mainly due to the atmosphere in the Former Matrimonial Home. The Applicant also suffers from Type 2 diabetes as set out in the Reply at 1 above. The Respondent [in context, the Claimant] has never worked and would have been unable to meet the monthly mortgage payments or the household bills."

65. This, it seems to me, seems to focus on what might happen if the deceased were to fall ill and be unable to work, rather than what might happen on his death.

66. Secondly, at paragraph 7 of his witness statement of 17 April 2019, the deceased said this:

> "In respect of the transfer of the Former Matrimonial Home to our daughter, my reasons were that, I have not been medically fit for quite some time and am in the early stages of Arthritis, I felt that if something were to happen to me as a result of my illness, our daughter would have been left with nothing, given the strained relationship between her and the Respondent. I genuinely thought that the Respondent would be able to remove our daughter from of the house if something happened to me, and our daughter did not partially own the Former Matrimonial Home. I did not have a will at the time and so believed not putting our daughter on the title deeds would leave her vulnerable. I simply thought it is best to add our daughter's name in the title deeds to give her some security for her accommodation in the future. I thought that adding our daughter's name to the title deeds would give her a legal standing and she could not have been kicked out by the Respondent if anything happened to me. The Respondent has never worked and if something were to happen to me, the Respondent would not have been able to pay the mortgage; therefore, I thought that our daughter would be more able and willing to gain employment thus being able to make the mortgage repayments on the Former Matrimonial Home."

67. Further, at paragraph 8 the deceased said:

> "I asked our daughter to tell the Respondent that she was being added onto the title deeds and explain that she would have the responsibility of paying the mortgage if something happened to me."

68. Finally, at paragraph 9 the deceased said:

> "I wish to reaffirm that this transfer to our daughter was not to gain any unfair advantage over the Respondent in case of any future divorce, but to secure our daughter's future if something happened to me due to my ill health. If I had any intention of gaining unfair advantage over the Respondent, I would not have paid off the mortgage in full since the transfer took place in September 2014. 1 simply took the initiative to try and secure our daughter's future. I had no intention whatsoever of defeating the Respondent's interest or claim following a divorce."

69. I bear in mind that this evidence was being given in the context of the application under section 37 of the Matrimonial Causes Act 1973, so the focus was on whether the transfer was with the intention of defeating a claim for financial relief on divorce, rather than on defeating an Inheritance Act claim.

70. Nonetheless, it does seem to me that the several references to "if something happened to me" go beyond thoughts of ill health. It is the wording used by someone who is contemplating what might happen after their death. The question is whether this is sufficient evidence that avoiding a claim for financial provision was one of the deceased's motives and moreover was a material motive when he made the transfer.

71. Mr Morrell says that there are striking similarities between the present case and *Sismey*, and refers in particular to the significant time which passed between the impugned act and the time at which it became relevant. He submits that as confirmed in *Sismey* a deceased might have multiple intentions when carrying out an act, and it is not necessary (consistent with the decision in *Kennedy*) for the deceased to have had the Act in mind. Mr Morrell says that the theme common to *Sismey* and to the present claim "is the notion of having in mind what would occur to assets at the time of the testator's death, and the desire to 'safeguard' against the risk that they would go to the person the testator objected to receiving some or all of the funds." He says that the deceased's references to "if something happened to me" (in the statements to which I have just referred) show an element of estate planning, and that it was a material intention of the deceased to defeat a potential claim under the Act when he died. Mr Morrell says *Sismey* provides powerful support to the Claimant's case on section 10. As he put it in his skeleton argument:

> "All of this points in one direction: the Deceased's intention was to pass an asset that would otherwise be in his Estate to another person with the intention of securing her future. The only logical corollary to this is that there was the intention of diminishing the assets that the Claimant might otherwise have a potential right to upon the Deceased's death."

72. Mr Coe says that the deceased's evidence about his intention shows that he was focussed on the Defendant's rights of occupation, rather than ownership; he was in fact right to have had those concerns, as later events showed. In the 2017 proceedings the Claimant had sought to remove him and the Defendant from the property, and the

statements he was making in the divorce proceedings followed in the wake of the 2017 proceedings. Mr Coe says that the references to the deceased's health or to "if something happened to me" show that he must have had in mind that the Claimant and Defendant would continue their joint occupation of the property if he died, and that he was trying to protect the Defendant's occupation, rather than defeat any sort of claim by the Claimant. As Mr Coe put it, there is a difference between an intention to benefit his daughter, which is the case here, and an intention to defeat a claim by his wife after his death, which was not the case on the evidence.

73. In my judgment, the facts in *Sismey* are rather different, and materially so, from those of the present case.

74. In *Sismey*, the contemporaneous emails show that it was a material concern of all relevant parties that a potential applicant for financial provision should not either inherit the property or be able to make a claim in relation to it, and that it should go to the deceased's son. There was an express reference to this in these email exchanges, and the possibility of a claim under the Act was also expressly mentioned. It is hardly surprising that in the particular circumstances of that case, and on the basis of the factual findings in relation to the contemporaneous documents, it was held that the requisite intention was present.

75. In contrast, in the present case, there is no contemporaneous documentation which assists. The conveyancing file on the occasion of the transfer, which was in the trial bundle, sheds no light on motive or intention at all. The Claimant says she knew nothing about the transfer at the time, and whilst this is disputed, it was not challenged in cross-examination. The Defendant's evidence is, as I say, unhelpful. What I am left with is the deceased's statement some 4 or 5 years after the event, which as I observed during oral submissions is rather self-serving and was intended to address only the issue then current, which was an application under section 37.

76. There is, in contrast to the position in *Sismey*, no evidence in the present case that any thought whatsoever was given to succession law or inheritance planning. The Defendant gave evidence at trial, which was not challenged, that in Sri Lankan culture it would be the daughter who would inherit on death (and as Mr Coe observes, that seems to have been the case with the Claimant and the property she owns in Sri Lanka). Even if divorce was being discussed in 2014 at the time of the transfer, there is nothing to suggest that it ever crossed the deceased's mind that "if something happened to me" before divorce, and he died intestate, the Claimant would get the statutory legacy and half the residue of his estate. It was the evidence of both the Claimant and the Defendant that the deceased knew little if anything about legal matters, and there was nothing to suggest that he knew that the effect of the transfer would be to give his share of the property to his daughter when he died (it might have been that he received advice about this at the time of the transfer, but there was no evidence of that).

77. Mr Coe submits:

    (1) The deceased's evidence seems to be that he wanted to give the Defendant a right of occupation; and/or to pass to her the responsibility for the mortgage.

    (2) The deceased was also concerned that the Defendant might be "kicked out" of the property by the Claimant if her name was not on the title.

(3) There is no indication that, in 2014, the deceased wanted to tie up the property in such a way so as to defeat any interest the Claimant might have in it.

(4) The deceased never brought proceedings to evict the Claimant, and there is no reason why he should have thought that co-habitation would not continue after he became incapacitated or died (to the extent he gave it any thought).

(5) The deceased did not petition for divorce until later, after the 2017 proceedings in which the Claimant had sought to evict him and the Defendant.

(6) The deceased did not make a will.

(7) The gist of the evidence appeared (as at 2014) that the deceased accepted that either the Claimant would remain in the downstairs room at the property supporting herself financially, or that she would return to Sri Lanka.

(8) The deceased clearly wanted to protect his daughter's right to live in the property (but not necessarily to the exclusion of the Claimant).

78. I agree with all of that, and also with the submission that the present case is far removed from the complex planning, on legal advice, in *Sismey*.

79. I have concluded that the Claimant has not established on balance of probabilities that it was a material intention of the deceased, in making the transfer in 2014, to defeat a claim under the Act. I will therefore not make an order under section 10.

80. In reaching that conclusion, I have not placed any weight on the fact that the transfer was only just within the relevant 6-year period before the deceased's death, although I was urged by Mr Coe to take that into account as a relevant factor. It seems to me that since it was within the relevant period, the lapse of time is not relevant. My conclusion is based on the Claimant's failure to prove the relevant intention.

(2) The joint tenancy and section 9

81. The next issue is whether the deceased's share in the property should be treated as part of his net estate. I have already set out the provisions of section 9. It gives the court a discretion to exercise ("the court…may order") and the share should only be treated as part of the net estate "to such extent as appears to the court to be just in all the circumstances of the case."

82. I am not persuaded that I should exercise the section 9 discretion in favour of the Claimant, for the following reasons.

83. The transaction was – as I have just held – not intended to deprive the Claimant of anything but to benefit the Defendant.

84. The effect of making such an order might lead to the sale of the property, against the Defendant's wishes, and she would lose her home.

85. I do not accept the Claimant's evidence that she wants to return to live in London. She has no connection with London anymore, and has been living in Sri Lanka for about 18 months, where she has family and assets.

86. The value of the Claimant's assets in Sri Lanka are broadly equivalent to the value of the property and once one takes into account the cash in the estate, which would be available were there to be an award in the Claimant's favour, there would be no need for the deceased's half share to fall back into the estate.

87. I need to deal at this point with the Claimant's assets in order properly to explain that last point.

88. The Claimant has always attempted to play down the significance of her assets abroad. Indeed, in the 2017 proceedings, she said that if she was evicted from the property she would be destitute, but she did not mention the existence of her Sri Lankan assets at all, and in my view this was misleading and intentionally so.

89. It is clear from the valuations of the Sri Lankan assets that they are worth £238,000 which is more than the net estate (since I have excluded the value of the property).

90. If one were to include half the value of the property, the estate would be worth £120,000 + £225,000, which is £345,000. The difference between that and the value of the Sri Lankan assets is £345,000 - £238,000, which is £107,000 – again, less than the value of the estate without the half share.

91. There is also the possibility of a further family inheritance. The Claimant again in my view deliberately played this down, and insisted that the commercial properties (in respect of which she might have had some prospect of a gift, under the Power of Attorney) had been transferred to her sister, but she brought no evidence of that, and I do not accept that there is no prospect at all of her inheriting further property on the death of her mother. Were she to inherit or be gifted a one-third share, that would increase the value of her assets by a further £120,000.

92. I also take into account that the Claimant's evidence was that she had reached an informal agreement with the deceased in the context of the divorce proceedings that they would bring all of the assets into account – the property, the assets in Sri Lanka – and divide them equally. Of course, this did not result in a binding agreement but I think it relevant that at that stage the Claimant was willing to divide everything equally.

93. I cannot see how it could be said to be just in all the circumstances to make an order under section 9, and I decline to do so.

Reasonable financial provision and section 3

94. My rejection of the Claimant's case under sections 9 and 10 leaves the net estate at around £120,000.

95. The effect of the intestacy was that no financial provision at all was made for the Claimant.

(1) The section 3 matters

96. I will consider each of the section 3 matters in turn. None of the factors automatically has more weight than any of the others; it is a matter of looking at them all and weighing up their respective importance when looking at the particular facts of this case.

(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future

97. The Claimant is in her late 50s. She has no health issues.

98. I do not accept the Claimant's evidence that she either wants or intends to return to live in London. She has no good reason to want to live in London, and every reason (family and property) to continue to live in Sri Lanka. As Mr Coe observes, correctly in my view, the Claimant has not worked since 1999, and there is in my view nothing which supports her professed intention to live and work in London.

99. The Claimant has produced two schedules, one which shows her proposed outgoings were she to live in London, and one which set out her present outgoings in Sri Lanka. Not surprisingly, it is far cheaper to live in Sri Lanka.

100. The Claimant has substantial property assets in Sri Lanka. The land is rented out, apparently at less than a commercial rent. The properties are capable of generating an income and of course have a substantial capital value.

101. The Claimant receives a state pension in Sri Lanka. The sum received is not known.

102. The Claimant has borrowed money from her sisters, to fund her legal fees in part (at least that was her evidence, although I was also told that her solicitors and maybe counsel, I am not sure, are acting on a conditional fee agreement), and to pay for her air fares so she could attend the trial (and the hearing in December 2022, when District Judge Wilkinson refused her application for an interim order under section 5).

103. There was no documentary evidence produced by the Claimant to support any of this (save two letters from her sisters in relation to the money they had provided). Thus there is no evidence about what tenancy agreements there may be in respect of the Sri Lankan properties, nor what has happened to the rent (the amount of which is unclear), and there is no documentary evidence about what work the Claimant might do in London.

104. I also note from the transcript of the hearing in December 2022, which was in the trial bundle, that the Claimant's evidence was that her flat in Colombo would be available to her from January 2023.

105. Overall, the Claimant's evidence was at best rather thin and at worst opaque concerning her income and expenditure.

(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

106. This does not apply.

(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

107. The Defendant is in her late 20s.

108. The Defendant has the property, valued at £450,000. I accept her evidence that she has little if anything left from what the deceased gave her, having incurred substantial legal fees defending the several claims brought against her by the Claimant. She earns around £1,200 net per month working for the NHS, having reduced her working hours because of the emotional stress the years of litigation have taken on her; again, I accept that evidence. She owes £35,000 to her uncle.

109. I accept Mr Morrell's observation that the Defendant's needs are relatively modest. None of the items in her schedule of expenditure were really challenged.

(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

110. I do not accept Mr Morrell's submission that the deceased had "considerable obligations to the Claimant" as she was "his wife of some 27 years who was financially dependent upon him until his death." The marriage, whilst lengthy, had come to an end in reality many years before the deceased died, and the parties had lived separate lives – albeit under the same roof, with the Claimant sleeping downstairs – for years as well.

111. However, I do accept that the deceased's obligations and responsibilities to the Defendant had largely ceased. He had been very generous towards her during his lifetime, as I have indicated. Mr Coe accepted that whilst the deceased and the Defendant were plainly very close, as she was an adult at the time of his death, it is difficult to say that the deceased had any obligations or responsibilities towards her.

(e) the size and nature of the net estate of the deceased

112. The estate is a modest one.

(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

113. This has no application.

(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

3(2)(a) and (b) – the age of the applicant, the duration of the marriage, and the contribution made by the applicant to the welfare of the family of the deceased including looking after the home or caring for the family

114. I shall deal with these together. Some of the factors here have already been considered above.

115. This was a long marriage. However, the Claimant made no material contribution to the marriage for years; the Claimant and the deceased had in effect lived separate lives for a long time.

116. The Claimant, who is in her late 50s, has supported herself for a number of years without the need for anything from the deceased. As I have commented, precisely how she has done this is a little unclear. I rather suspect that she has had considerable support from her family in Sri Lanka and the USA.

117. The Claimant and the deceased had always kept their assets separate. The deceased owned the property which was the matrimonial home, and the Claimant had her property in Sri Lanka.

118. I have already mentioned the Defendant's evidence that in Sri Lankan culture the daughter would normally inherit on the death of a parent.

119. The Claimant has subjected the Defendant to years of litigation over the property and now the estate. She denied she had tried to evict the Defendant (despite being shown the evidence that she had). She disputes the valuations of the Sri Lankan properties and played down the suggestion that her family in Sri Lanka were well off, which they plainly are.

120. I agree with Mr Coe that the Claimant's motivation in all of these goes well beyond seeking provision; it is reflective of the bitterness between her and the Defendant and is in my view a further chapter in the saga which has been running since the 2017 proceedings to evict the Defendant.

121. The Defendant, in contrast, came across as an honest and straightforward witness who has been very badly affected emotionally by the sudden loss of her father, the years of abuse which she says she has suffered (about which I make no findings) and the years of litigation into which she has been unwillingly drawn. This came across very clearly in her evidence, as did the sincerity with which she said that the Claimant made no real contribution to the family at all. I think that was probably a slight exaggeration, because in the early years the Defendant would have been too young to know what the Claimant did or did not do. I have already noted the Claimant's evidence that she was the home-maker for 14 years.

122. Mr Morrell urged me not to try and determine which of the Claimant or the deceased was "worst" in the marriage, and said that in every unhappy marriage the causes are nuanced with faults on both sides. I can see force in that submission, but in my judgment, wherever the faults lay, and whatever the rights and wrongs, the family dynamic was awful for many years, and it culminated in the 2017 proceedings and then the divorce proceedings where each side blamed the other. I have to say that in my view the Defendant was very much the innocent victim of the Claimant's hostility.

(2) The "divorce cross-check"

123. It is often said that this points towards an equal sharing of assets, in accordance with the family law case of *White v White* [2001] 1 AC 596.

124. I have considered the helpful observations and guidance given by Briggs J, as he then was, in *Lilleyman v Lilleyman* [2012] EWHC 821 (Ch), in particular the following paragraphs:

> "45. To a chancery judge, for whom the jurisprudence about financial relief on divorce is not the bread and butter of his daily fare, the divorce cross-check introduces a range of additional legal complications, arising from the still developing principles originating in the epoch-making decision of the House of Lords in *White v White* [2001] 1 AC 596. Quite separately, there arises the difficulty of applying those principles, as required by the divorce cross-check,

> to the undeniably different circumstances surrounding the termination of a marriage by death, rather than breakdown of the relationship. In that respect, the chancery judge may suffer from a lesser disadvantage.
>
> 46. Taking those matters in turn, I would tentatively summarise the divorce principles relevant to the present case as follows. First, the fundamental principle which illuminates all the detail is that a marriage is now recognised to be an essentially equal partnership. In consequence, the division of the available property upon breakdown of the marriage must be conducted upon the basis of fairness and non-discrimination, arising from the basic concept of equality permeating a marriage as is now understood. But equality of treatment does not necessarily lead to equality of outcome.
>
> 47. That basic concept gives rise to three requirements, which may be summarised as financial needs, compensation and sharing. Meeting each of the divorcing parties' frequently different financial needs is the first call upon the available property, and frequently exhausts it. Compensation addresses prospective economic disparity between the parties arising from the way they conducted their marriage and usually, but not invariably, compensates the wife rather than the husband. Sharing is applied when there is property still available after the first two requirements have been satisfied, and in principle extends to all the parties' property but, to the extent that the property is 'non-matrimonial', there is likely to be better reason to depart from it. The concept is particularly applicable to what is sometimes described as the 'fruits of the partnership' in relation to which the yardstick of equality is applied as an aid, but not as a rule. It will be apparent that I have derived the above summary of the essential principles from an attempt to assimilate the speeches of Lord Nicholls and Baroness Hale in *Miller v Miller* [2006] 2 AC 618, in which they summarise the effect of the change in thinking brought about by *White v White*, and also from *Charman v Charman* [2007] EWCA Civ 503, in particular at paragraph 66."

125. As was noted in *Lilleyman*, the leading judgment on how the divorce principles are to be applied to claims under the Act by means of the divorce cross-check, and the significance of the separate requirement in section 3(2)(a) to have regard in any event to the duration of the marriage, is *Fielden v Cunliffe* [2006] Ch 361, in which Wall LJ said:

> "Caution, however, seems to me necessary when considering the *White v White* cross check in the context of a case under the 1975 Act. Divorce involves two living spouses, to each of whom the provisions of s.25 of the MCA 1973 apply. In cases under the 1975 Act, a deceased spouse who leaves a widow, is entitled to bequeath his estate to whomsoever he pleases; his only statutory obligation is to make reasonable financial provision for his widow. In such a case, depending upon the value of the estate, the concept of equality may bear little relation to such provision".

126. I also take into account what was said in *P v G, P and P (Family Provision: Relevance of divorce provision)* [2006] 1 FLR 431:

> "I am struck by the force of the repeated observations in the decided authorities about the difference between divorce where there are two surviving spouses for whom to make provision and death where there is only one. It seems to be probable that this difference will not infrequently be reflected in greater provision being made under the 1975 Act than would have been made on divorce and that this may legitimately be so even where the estate is a relatively large one as it is here".

127. If the "matrimonial pot" included all of the parties' assets (that is, the deceased's half-share in the property, and the Claimant's own property interests), then I can see nothing wrong – in the particular circumstances of this case – in the mathematical result I have set out above, where the Claimant has come out of it with half or around half of the total "pot". That is what the Claimant may well have got in the divorce proceedings, and indeed it was what she said she had agreed informally with the deceased. That is also the position in which she now finds herself. I see no reason why the cross-check should lead to a conclusion that the Claimant receiving nothing on an intestacy was a failure to make reasonable financial provision for her.

(3) Conclusion on the section 3 matters

128. Taking all of these factors into account, I am not satisfied that the intestacy failed to make reasonable financial provision for the Claimant. It was not unreasonable for the Claimant to receive nothing from the deceased's estate.

Conclusion

129. The claim for financial provision from the deceased's estate fails.

[End of judgment]