

Poor Plan on Conveyance – Court of Appeal Rules

A poorly-drafted plan and a refusal to compromise have led to an argument over the boundary between two rural properties reaching the Court of Appeal.

The dispute between the owners of adjacent land arose because there was a brook and a fence that were close to one another. One owner claimed the fence was the boundary whereas the other held that the brook divided the properties.

The map accompanying the conveyance was unclear – it merely showed a wavy line which represented the stream. The fence was not shown on the plan. However, because the fence was in situ when the land was conveyed, Lord Justice Mummery ruled that it marked the boundary between the properties. When giving his judgment, he was highly critical of the inability of the



neighbours to compromise and of the resultant costs for the loser of the dispute.

Clarity of documentation in conveyances is essential if the risk of future litigation over boundaries is to be prevented. If you are buying a property or are unsure where your boundary lies, we can help you minimise the risk of a boundary dispute and advise you on any legal issues.

HMRC Tax Attack on Property Undervaluation Successful



A robust attitude taken by an executor to the valuation of a property came to nothing recently when HM Revenue and Customs (HMRC) were successful in defeating the executor's claim that a property

valued by them at £475,000 for Inheritance Tax (IHT) purposes should be valued at £400,000.

The most surprising aspect of the dispute was HMRC's agreement to the IHT valuation of £475,000, as the property was sold two years after the death of its owner for £675,000.

Criticising the executor's evidence as 'misleading', the Tax Tribunal accepted that HMRC's valuation should apply.

HMRC will often reopen IHT returns where assets, especially houses, are included in estate valuations for IHT purposes and are subsequently sold for a much greater sum than their probate valuation. A new penalty regime, which came into force in April 2010, makes undervaluations a significant risk for executors.

We can help you avoid problems with HMRC in dealing with the tax aspects of an estate.

Mistakes in Probate Applications

The Court Service has revised its guidance on making an application for probate, in order to take into account the most common errors made.

The guidance has been published by HM Revenue and Customs on page 6 of the June

2010 Inheritance Tax and Trusts Newsletter. See <http://www.hmrc.gov.uk/cto/newsletter-june10.pdf>.

If you want to ensure an estate of which you are the executor is dealt with efficiently, our experienced probate team will be pleased to assist you.

Will Challenged Despite Clear Intention

Recently, a court hearing was necessary to sort out a dispute over a will, even though it was common ground that the testator had made the will on her own initiative, was of sound mind and knew and approved of the contents of the will, and that it was not procured by impropriety or undue influence.

The question before the court was whether or not the 'kit' will was 'duly executed'. At issue was whether the

testator's signature had been witnessed properly.

The claimant alleged that the will was not valid because the requirement that it should be witnessed by two persons, as specified under the Wills Act of 1837, had not been met.

The judge declined to conclude that the testator, whom he described as being 'careful', would have failed to comply with the rules and he therefore found that the will was valid.

It may seem surprising that a will can be queried on what seem to be minor procedural grounds when the testator's intentions are clear, but it can happen. Had the challenge been successful, the estate would have been distributed as if no will had been made.

We can help you make sure your will cannot be questioned on grounds of procedural irregularity.

Children and Contact Arrangements

Two recent decisions in child contact cases illustrate that the courts recognise the importance, where possible, of children having a relationship with both of their parents.

The Children and Adoption Act 2006, which came into force in December 2008, gives the courts more flexible powers to facilitate child contact and to deal with cases where one parent fails to comply with a contact order. For example, a resident parent who breaches a contact order can be required to carry out unpaid 'community' work for up to 200 hours. The Act does not, however, provide any new enforcement measures against a parent who obstructs contact with the other when a shared residence order has been made.

When a couple separate and a hostile relationship exists between the parents, it is not uncommon for the resident parent, often the mother, to deny the other parent any right to contact with their children. If this situation is allowed to persist, it can result in the children becoming alienated from the non-resident parent.

Recent cases suggest that where the resident parent is implacably opposed to any contact with the other parent and there is no justifiable reason for their refusal to cooperate

with a contact order, the courts may be more willing to consider transfer of residence as a way of safe-

guarding a child's best interests in the long term. This was the reason given in 2009 by the Court of Appeal for upholding a decision to order the transfer of residence of a child from the mother to the father. In a more recent case, where the mother had deliberately obstructed the father's access to his child, the Court again decided that it would be in the long-term interests of the child to live with his father and half-siblings, even though the child had made it clear he had no wish even to see his father and the judge found that the mother had been a good mother in most respects.

Whether this represents a shift in attitude by the courts, only time will tell.



House Sale Freeze Follows Maintenance Arrears

A wealthy man, who owed more than £78,000 in arrears of child maintenance, has had an order served on him by the court which prevents him from selling his house unless the arrears are settled.

The man had failed to pay any maintenance for more than 12 years and it was thought that he might try to put the proceeds of the sale of his house beyond the reach of the Child Support Agency, which is now part of the Child Maintenance and Enforcement Commission.

The Commission sought the order over the four-bedroom property to ensure that the arrears of maintenance are made good.

In appropriate circumstances, the Commission has the power to order the possession and sale of properties or the imprisonment or banning from driving of those who build up substantial arrears of child maintenance.

For advice on all financial issues arising out of relationship break-up, contact us.

Wife Must Return Documents Obtained by Stealth

The Court of Appeal has reversed an earlier decision of the High Court that the ex-wife of a wealthy man could use documents downloaded from his computer without his permission to substantiate her claim for ancillary relief (the financial settlement on divorce).

The woman was afraid that her husband would conceal his assets. One of her brothers therefore accessed a server in an office which he shared with her husband and copied information and documents from it: eleven files were printed out and given to her solicitor. He passed them to a barrister, who removed those in respect of which it was thought the woman's husband could claim legal professional privilege, making them inadmissible as evidence in court.

The remaining seven files of documents were passed to the solicitors acting for the woman in her divorce. Her husband sought the return of the files and all copies of them and an order preventing the information contained therein from being used in evidence.

The High Court ruled that the files had to be returned to him so that he could remove any material which he claimed was subject to legal privilege, but the rest of the material would then have to

be returned to his ex-wife. Both sides appealed against the decision.

The rules surrounding disclosure of one's circumstances in divorce proceedings require each party to give a 'full, frank, clear and accurate disclosure' of their financial position. Because this duty is often breached, the family courts 'will not penalise the taking, copying and immediate return of documents but do not sanction the use of any force to obtain the documents, or the interception of documents or the retention of documents... The evidence contained in the documents, even those wrongfully taken will be admitted in evidence because there is an overarching duty on the parties to give full and frank disclosure'.

However, the Court of Appeal considered that in this case the breach of confidence of the copying could not be condoned because at the time it occurred, the wife only feared that her husband would fail to make a full and frank disclosure when the divorce proceedings ensued. It was 'not open to her to pre-empt consideration of the husband's disclosure...'. Also, she failed promptly to disclose to her then husband that she had copied the files.



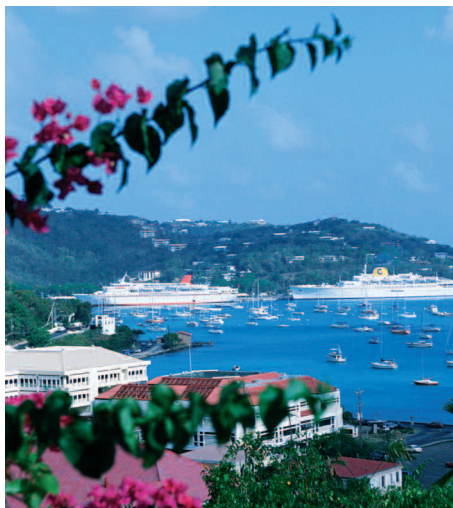
Lord Neuberger said, "There are no rules which dispense with the requirement that a spouse obeys the law."

Accordingly, the documents were required to be handed back to the ex-husband and the ex-husband's solicitors were reminded of their duty to attempt to ensure their client made a full and frank disclosure of his assets.

The Court concluded that 'in ancillary relief proceedings, while the court can admit such evidence, it has power to exclude it if unlawfully obtained, including power to exclude documents whose existence has only been established by unlawful means'.

This case has implications for those seeking to 'make sure' they get full evidence of their spouse's financial affairs when commencing divorce proceedings. Contact us for advice on all family law matters.

Nightmare Cruise Award Cut by Court of Appeal



A couple who were awarded £22,000 in damages after they cut short their £60,000 dream cruise, when it turned into a nightmare due to sickness and physical discomfort, have had their damages slashed by the Court of Appeal.

The couple abandoned the three-month cruise after only one month and then sued the cruise line, Cunard. The County Court awarded them £2,500 each for the diminution in value of the cruise and £7,500 each for distress and disappointment. The wife was also awarded £2,000 for wasted expenditure on new gowns.

On appeal, the Court of Appeal ruled that the settlement relating to distress and disappointment should be cut: the physical discomfort was 'ephemeral', said LJ Ward, and should not be equated with a psychiatric injury.

If your dream holiday turned into a nightmare, you may be able to claim against the tour operator: contact us for advice.

Warning to Holidaymakers and Non-Residents

Next time you take a holiday in Europe, make sure you have appropriate health insurance.

Many British holidaymakers think that the European Health Insurance Card (EHIC) will cover them if they are taken ill and require immediate medical treatment in a country which belongs to the European Union (EU), but this has never been the case in all instances, as a recent decision of the European Court of Justice confirmed.

It involved a Spanish national who was admitted to hospital in France. He applied to the Spanish authorities for reimbursement of the costs he was required to pay to the French hospital for his treatment. The Spanish authorities refused to pay, despite the fact that had he received the same treatment in Spain, it would have been free.

The European Court ruled that Spain had met its obligations to the man under EU law.

The effect of the decision is that when a patient has to go to hospital, the costs will only be refunded by the 'insuring' state, to the EU state in which the hospitalisation occurs, to the extent that the same treatment would have been available free of charge in the patient's country of stay. Application of



this rule means that the state in which hospitalisation occurs must look to the patient for the recovery of any costs that will not be so reimbursed.

Also, under a recent change in the rules, some British citizens resident in other EU countries must now apply for their EHIC from the UK, not from their country of residence.

Knowing where you stand as regards health insurance in another country is very important – especially for those who spend substantial periods of time abroad.



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