NEW SQUARE Chambers

Friday 23 June 2023

LATTIMER V KARAMANOLI [2023] EWHC 1524 (CH) - JUDGMENT SUMMARY

By James McKean

Lattimer v Karamanoli [2023] EWHC 1524 (Ch)

Evi Kalodiki ('**the Deceased**') made a will on 27 December, married the Claimant on 28 December, and died on 31 December 2018. She left an estate of some £10 million.

Her will ('**the Will**') made no mention of the impending marriage but contained the clause: 'This is my last and only will.'

The Claimant claimed for a declaration that the Deceased had died intestate.

The Defendant, the Deceased's sister, counterclaimed to propound the Will. She sought to construe or rectify the Will such that it was expressed to have been made in contemplation of marriage ('**the Probate Claim**'). The Defendant had also brought proceedings in the Family Court to challenge the validity of the marriage ('**the Marital Claim**').

The Claimant applied for summary judgment.

Master Clark dismissed the application with respect to the Probate Claim and allowed it in part with respect to the Marital Claim.

The Probate Claim

The Master's judgment contains an interesting discussion of the extent of the Court's power to construe a will. The long-standing maxim that the Court cannot use the power of construction to re-write a will may no longer be good law [paragraphs 47 – 48].

The Master found that the Defendant had real prospects of proving the clause: *'This is my last and only will'* to be ambiguous, both in its own right and in the circumstances, as the Deceased knew of her imminent marriage and impending death when the Will was being made [50 – 53]. The Defendant had a real prospect of construing the Will such that it was made in contemplation of the marriage [60].

As to rectification, the Master could not rule out the prospect of establishing a clerical error or a failure to understand instructions, as the Will was prepared with *'all persons present no doubt both exhausted and in a high state of emotion'* [70] and there was missing evidence from persons involved in the drafting of the Will.

The Marital Claim

However, the Defendant had no real prospects of seeking a declaration that the marriage between the Deceased and the Claimant was void at inception. Under sections 55 and 58 of the Family Law Act 1986, the Court had no power to make that declaration [84 – 85].

In any event, the Defendant had attempted to argue that the licence by which the marriage was conducted was invalid and so the conditions for validity of the marriage set out in The Marriage (Registrar General's Licence) Act 1970 had not been satisfied. In particular, it was alleged that proper disclosure of the Deceased's capacity to marry had not been made to the superintendent registrar who granted the marriage licence.

The Master found this argument had no prospects of success. The Deceased had capacity to marry – a threshold which the Master held to be *'relatively low'* [89] and which did not require the Deceased to know that the marriage would revoke a will [88].

The Master did not rule out however that the argument might succeed on other facts:

> *'There are circumstances in which it might be arguable that a marriage licence was void because it was wholly without foundation, for example, if the doctor's certificate was forged, or signed by a doctor who had not seen the patient at all. This is not that type of case.'* [92]

Furthermore, the Court had no power to declare a domestic marriage invalid on public policy grounds, even though those grounds might allow the Court to decline to recognise a foreign marriage [93 – 98].

However, while these arguments would not permit the Defendant to obtain a declaration that the marriage was void, they might prevent the Claimant from seeking a declaration that the marriage was valid at its inception [99]. In challenging such a declaration, the Defendant had real prospects of success.

Practical pointers

This judgment falls neatly into a body of case-law post-***Marley v Rawlings*** [2014] UKSC which demonstrates the strength of the Court's power of construction (see eg ***Eade v Hogg*** [2021] EWHC 1057 (Ch), ***Royal Society v Robinson*** [2015] EWHC 3442 (Ch), and ***Guthrie v Morel*** [2015] EWHC 3172 (Ch)).

It may not be long before the Court openly admits its power, and willingness, to rewrite a will by way of construction.

As to rectification, it is clear that the statutory gateways in section 20(1) of the Administration of Justice Act 1982 will be interpreted broadly, although they cannot simply be ignored, and a clerical error must be *'clerical in nature'* [65].

It would appear that the remedy of rectification is more likely to available where the will is drafted in strained or unorthodox circumstances – by lay persons, on a deathbed, or in a situation of emotion and stress. This is quite sensible, although rectifiable mistakes can still transpire in wills drafted by experienced solicitors (see eg ***Eade v Hogg*** [2021] EWHC 1057 (Ch)).

As to marriage, this remains an extraordinarily powerful tool – or, in some circumstances, weapon – by which to gain entitlement to the estate of a deceased spouse.[1]

Following ***Re Roberts*** [1978] 1 WLR 653, the circumstances in which a marriage might be challenged after death are extremely constrained. A probate practitioner well-versed in challenging wills for incapacity, want of knowledge and approval, undue influence and so on cannot use those same tools to declare a marriage void. Master Clark's judgment confirms this, although the Master did not rule out defending a claim for a declaration of a marriage substituting on this basis. It seems that challenging a marriage, like promissory estoppel, may be a shield rather than a sword.

The possibility of challenging a marriage for non-compliance with the Marriage (Registrar General's Licence) Act 1970, which has not been definitively ruled out, will apply in a vanishingly small set of circumstances. Similarly, rectification and / or construction of a previous will, which may provide a remedy in this case, will assist only in the most exceptional of cases.

While this is true of domestic marriages, the prospects of asking the English Courts to decline to recognise an overseas marriage would appear to be higher. It is an unfortunate quirk that a spouse may marry without capacity in England, and the marriage will likely endure, whereas the recognition in England of an incapacitous marriage overseas may be open to challenge.

[1] For more detail, see *The Predatory Marriage Trap* https://www.newlawjournal.co.uk/content/the-predatory-marriage-trap.

Another unfortunate quirk is the lower test for capacity to marry compared to capacity to make or unmake a will. It would seem a person may lack capacity to revoke their will in a solicitor's office – but they can instead go to a registry office and achieve the same result.

The Law Commission is investigating the interplay between marriage and wills. The issue has gained some media attention[2] and there may be an appetite for reform. Until then, it remains the case that the surest way to gain control of another's estate is to put a ring on their finger.

James McKean, led by Alper Riza KC and instructed by Andrew Bishop of Rothley Law, acted for the Defendant.

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[2] *The Guardian view on predatory marriage: new safeguards are needed*: https://www.theguardian.com/commentisfree/2021/oct/03/the-guardian-view-on-predatory-marriage-new-safeguards-are-needed