Lifestyle choice sinks adult daughter's financial provision claim

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CATEGORY:
ARTICLE

We are all eagerly awaiting the Supreme Court's decision in *Ilott v Mitson*, but Ames v Jones, where an adult daughter's Inheritance (Provision for Family and Dependants) Act 1975 claim fell flat, suggests some are not holding their breath. Danielle Ames not only failed in her claim, but was criticised for being an even more unreliable witness than her stepmother, and for choosing not to work.

BACKGROUND

Michael Ames died in 2013 leaving Danielle, a daughter from his first marriage and his second wife, Elaine.

Michael had given a picture framing business, *'Ames Frames'*, to Danielle in the 1990s. Danielle gave it up in 2003. He still had a glazing company called Hond & Langer ('H & L') and a balloon company in partnership with Elaine, operating out of premises they jointly owned. Michael and Elaine also jointly owned their home.

Danielle claimed to be paid £80 per week to work for H & L and had payslips to prove it. Elaine disagreed and said Danielle had never worked for H & L.

Danielle and her partner had a business called All Frames and Mirrors, which Michael had funded to a disputed extent.

Danielle's witness statement said she and her partner started this together, but at trial she said he ran it as a sole trader.

Michael's will left everything to Elaine if he died before her (if Elaine had died first, Danielle would have taken 40% and 60% would have been divided between Elaine's children and Danielle's children).

IMPRESSIONS COUNT

Danielle and Elaine both gave evidence. The judge considered both unreliable.

He described Danielle's evidence variously as *'gilding the lily'*, *'watered... down'*, and *'an invention... to get her out of a hole'*. *_She blamed her solicitors and her partner, failed to take responsibility, and failed to give straight answers '_She was not above inventing or embellishing facts if she could see no other way of sticking to her story in the face of other evidence.'* Ouch!

By contrast Elaine's *'demeanour impressed* [the judge] *more favourably than Danielle's'*. Although there were *'a number of respects in which her evidence was unreliable'* and she had *'convinced herself of her own narrative, which [was] not always accurate'*, she *'gave her evidence in a straightforward way, avoiding exaggeration'*.

DEFLATING BALLOONS – ECONOMICS ARE EVERYTHING

Michael's estate was sworn at £1,049,414 for probate. Danielle could be forgiven for thinking there was enough to make some provision for her as well as Elaine.

However, the 1975 Act requires a judge to consider the value of the estate as at the date of trial. By trial the balloon business had closed down, claims against H & L had reduced the value of its shares to nil, and other assets had been dissipated.

This fundamentally altered the premise of Danielle's claim.

WAS DANIELLE MAINTAINED?

Danielle's *'deeply unsatisfactory'* evidence of her financial position showed that her family had a monthly deficit of £2000. The judge considered this exaggerated. If she did receive £80 per week from the glazing business, this represented earnings, not maintenance. Although Michael made generous gifts, this did not amount to funding her lifestyle.

Danielle claimed to *'idolise'* her father and he, in turn, had *'doted'* on her. Elaine claimed they had a *'rocky and distant relationship'*. The judge considered both to be exaggerations.

A LIFESTYLE CHOICE

Elaine is 63, *'no longer works and cannot be expected to do so.'*

Danielle accepted that she is able to work, but she is a picture framer, and has known no other work. She would like to work with her partner, but the business could not support them both. She produced no evidence of having looked for work and the judge did not consider her skills non-transferable.

The judge concluded that *'her lack of employment is a lifestyle choice. That alone is sufficient to defeat her claim'.*

POINTS TO TAKE AWAY

Danielle made her bed and the judge thought she should lie in it. This appears to be a move away from awards to impecunious adult children, but it is unusual for a judge to be as critical of a claimant's evidence as this judge was of Danielle.

This case is not authority but it is an indicator of judges' wide discretion. Whether the Supreme Court reins in that discretion remains to be seen and we continue to await judgment in *Ilott v Mitson* with bated breath.

It is also a reminder not to lose focus on what is actually in the estate.