

It's not over until the Applicant sings: disinherited son secures opera singing funding under 1975 Act

11 MARCH 2015

Paul Hewitt

PARTNER | UK

CATEGORY:
[ARTICLE](#)

The great majority of financial provision claims, ie those under the Inheritance (Provision for Family and Dependants) Act 1975, result in what is called a clean break order. However, occasionally claims are compromised on the basis of an order for periodical payments for a defined period. The case of *Taylor v Bell & Another [2013] EW Misc B3 (CC)* deals with a claim by a disinherited son to vary such an order. The background facts are set out below.

Peter Gardiner died in December 2006 leaving an estate valued at approximately £2 million. He had two sons, Lee Gardiner and Miles Taylor. He left £350,000 to two charities, his personal possessions to Lee, and the residue to a discretionary trust. Lee, a number of named individuals and any charity of the trustees' choosing were to be the beneficiaries of this trust. Miles was excluded and no provision was made for him in his father's will.

Miles made a 1975 Act claim for reasonable financial provision out of his father's estate. The Judge described Miles as a talented singer who wishes to become an opera singer, and noted that he has some learning difficulties which affect his literary skills and academic performance.

In April 2008, while the 1975 Act proceedings were ongoing, Miles suffered multiple chest and liver injuries in a traffic accident and was in hospital for several weeks. Owing to the accident, Miles had to restart his sixth form education.

In May 2008, the 1975 Act claim was settled out of court and the settlement recorded in a Consent Order. The Order provided for Miles' reasonable maintenance through sixth form college and university. It provided a maximum of £210,000, the payments to come to an end in August 2014.

Following his disrupted sixth form education, Miles attended the Royal Northern College of Music for a degree course, but, partly owing to his learning difficulties, he failed his second year exams. He then transferred universities. His new university course is a four-year course, due to end in the summer of 2015. He also hopes to study a two-year postgraduate course starting in September 2015. On the basis that his circumstances had changed, his education was disrupted, and he had not claimed any money for fees and accommodation for the 2009-2010 and 2010-2011 academic years, Miles asked for his unpaid maintenance to be reallocated to the 2015-2016 and 2016-2017 academic years. The executors of his father's estate refused, saying they had no power to amend the terms of the Consent Order.

When Miles applied to the Court, the executors raised a number of objections in evidence to argue that the Order should not be varied. These included arguments that the level of his musical talent was insufficient for postgraduate study, he was irresponsible with money, and that there are other sources of funds available including support from his mother, government loans and grants, and other grants and scholarships. The executors' primary objection was that the Court could only vary the Order in limited circumstances, none of which had arisen.

On the evidence provided by Miles' music tutor, the Judge found that he was committed to his singing career and seemed to have good prospects of success in achieving a place on the postgraduate course. He dismissed the executors' arguments that Miles was irresponsible with money and took into consideration the disruption to his education.

The Judge also found that he had complete discretion to vary the terms of the Order, and decided to do so because Miles had not received the maximum amount in the original Order.

One of the executors, Mr Bell, explained in evidence that Miles sought total expenses of £90,000. However, the executors by that stage only retained £38,479. The executors' evidence was that when it had become apparent that the full amount of £210,000 was not going to be claimed, they had made additional distributions to the discretionary beneficiaries (although he was unable to give specific dates when cross examined).

The Court awarded Miles £6,500 for the current academic year and £7,500 for each of the following academic years, conditional on him being offered a place on the postgraduate course. The Court did not specify the purpose for these sums but stated that they should cover Miles' course fees and assist with his rent.

In defending the application, the executors had incurred costs of £23,267.99 which the Judge described as *'both unfortunate and disproportionate'*. In particular, he was *'far from convinced that it was necessary for the executors to instruct an expert'* as to whether Miles had real vocal potential. Accordingly, the Judge limited the level of expenses that the executors could recover from the estate.

Authors

Paul Hewitt

PARTNER | LONDON

Trust, estate and inheritance disputes

 +44 20 7597 6197

 paul.hewitt@withersworldwide.com