When no claim doesn't mean no claim — former spouse bringing 1975 Act claim as cohabitee

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Where a divorce order states that parties to a divorce may not claim a share in either's estate under the Inheritance (Provision for Family and Dependants) Act 1975 (the 1975 Act), one might assume that on the death of one of the parties, the survivor is barred from claiming for provision under the Act.

But that is not the decision reached by Deputy Master Matthews in the case of *Chekov v Fryer*.

Miss Chekov married Mr Fryer in the late seventies. The marriage broke down and they were divorced in 1981. Mr Fryer had two sons from a previous marriage.

In common with most divorces, the order dealing with financial provision included a prohibition on either party being entitled to claim against the estate of the other under the 1975 Act unless the parties shall re-marry.

The 1975 Act entitles certain categories of applicant to bring a claim if they consider that a Will (or intestacy) does not make reasonable financial provision.

In 1996 cohabitees were given the right to bring a claim and, in 2004 as a result of the Civil Partnership Act, civil partners and former civil partners were also added.

The categories are:

- Spouse or civil partner
- Former spouse or former civil partner who has not formed a subsequent marriage or civil partnership
- Cohabitees
- A child of the deceased
- A person who is treated by the deceased as a child of any family in which the deceased stood in the role of a parent; and
- A dependant

Miss Chekov and Mr Fryer never re-married and therefore the prohibition on bringing a claim for financial provision once Mr Fryer died, would appear to have been clear-cut.

However, by the time of Mr Fryer's death, Miss Chekov and Mr Fryer were living in the same property and Miss Chekov claimed that she and Mr Fryer had been cohabiting. Cohabiting under the 1975 Act is defined as living in the same household 'as the husband or wife' of the deceased.

Mr Fryer's sons accepted that they lived at the same address but denied that they had been cohabiting.

Whether or not they were cohabiting is a debate that may yet have to be determined by a judge.

The sons said it did not matter and attempted to strike out Miss Chekov's claim at the very beginning on the basis that the prohibition in the divorce order meant that Miss Chekov was not entitled to bring a claim whatever her status.

Miss Chekov argued that the original divorce order only prevented her bringing a claim as a former spouse. She said it did not stop her claiming as a cohabitee, not least as that right only came into existence in 1996.

The Deputy Master agreed that the original order did not prevent a claim as *cohabitee*.

He was particularly troubled by the oddities that might otherwise arise.

A person formerly married to A but since divorced and cohabiting with B would be able to make a claim against B's estate on his death. Similarly a person formerly married to A, then divorced but remarried to A would be able to make claim on his death. But the same person formerly married to A but since divorced and then cohabiting with him (Miss Chekov's scenario) would not be allowed to do so.

This he regarded as being an irrational situation and suggested that the court should not attribute to Parliament a useless intention. Indeed the Master concluded that the statute envisages that a divorcing couple may choose to put themselves back within the ambit of the 1975 Act by re-marrying. He felt it was illogical to say that somebody who has been married, then divorced, but then cohabits (rather than re-marries) cannot bring a claim as a cohabitee.

On its face this may not appear to be a significant decision but the number of marital breakdowns and cost of housing may mean it has greater significance than first appears. The sheer practicality, particularly the cost, of dividing one household into two may also mean that parties who have gone through a legal separation remain living under the same roof. Post-death the availability of a claim may well tempt the survivor to argue that the post-separation relationship had returned to one of spousal-type cohabitation.

The sons are pursuing an appeal and we look forward to seeing what happens.

Read the case here.

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