Two weddings and a funeral

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Stephen Richards
PARTNER | UK

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(Adepoju v Akinola [2016] EWHC 3160 (Ch))

How does a court arrive at a decision that is not necessarily the objective truth?

The claimant (Adejumoke Adepoju) was described by the judge as 'argumentative, theatrical and sure she was right' and that she 'asked questions rather than answering them.' She had also lied to the court, and had taken £17,000 from her late mother's bank account referencing withdrawals as 'student loan' and 'credit card loan.' The defendant (Akinola) fared only slightly better. The judge commented that he was 'more engaged with the court than the claimant' but that 'he may have persuaded himself of the truth of things that he was told and in which he wishes to believe.'

Medinat Adepoju died intestate in July 2015. Her estate had significant value. Her daughter, the claimant, applied for Letters of Administration but was blocked by the defendant who claimed to be Medinat's widower. The question of who was entitled on intestacy and who could obtain Letters of Administration depended on whether Medinat and the defendant were recognised in England as being married. There were questions about whether a marriage had taken place, whether the defendant had actually divorced his previous wife and whether there had been a polygamous marriage. The evidence put before the court was often unclear, contradictory and unsatisfactory.

How then does a court approach and consider evidence and reach a conclusion in such circumstances?

In paragraphs 10, 11 and 12 of the judgment the court set out its approach in such circumstances:

'10. The first is that, in our system, it is for the parties to seek out and place before the court the material which they consider will assist the court and promote their case. It is not for the court to investigate of its own motion. Other relevant material may possibly exist somewhere else, but it is not the duty of the court to look for it. In general terms, the court makes a decision only on the material put before it by the parties.

11. The second point is that, in English civil procedure law, one party or the other bears the burden of proving any particular matter in issue between them. If the person bearing that burden satisfies the finder of fact (judge or jury), after considering the material before the court, that on the balance probabilities a thing happened, then, for the purposes of deciding the case, it did happen. If that person does not so satisfy the fact finder, then that thing did not happen. The system is binary, and the judge decides on the basis of the burden of proof. There is thus no room for maybe: see Re B (Children) [2009] 1 AC 11, [2], per Lord Hoffman.

12. The third point is that, where a party could give or call relevant evidence on an important point without apparent difficulty, a failure to do so may in some circumstances entitle the court to draw an inference adverse to that party, sufficient to strengthen evidence adduced by the other party or weaken the evidence given by the party so failing: see Wisniewski v Central Manchester Health Authority [1998] PIQR 324, CA; Jaffray v Society of Lloyds [2002] EWCA Civ 1101, [406-7];; Thames Valley Housing Association v Elegant Homes (Guernsey) Ltd [2011] EWHC 1288 (Ch), [19].'

Added together, these points mean that the decision of the court is not necessarily the objective truth of the matters in issue. Instead it is the most likely view of what happened, based on the material that the parties have chosen to put before the court, taking into account to some extent also what the court considers that they should have been able to put before the court but chose not to.

In view of the unsuitability of the parties, the court decided to appoint an independent administrator under section 116 (1) Supreme Court Act 1981.

Authors

Stephen Richards

PARTNER | LONDON

Trust, estate and inheritance disputes

+44 20 7597 6276

stephen.richards@withersworldwide.com