

Inheritance dispute: escaping adverse costs when unexpected evidence destroys your case

24 APRIL 2019

CATEGORY:
[ARTICLE](#)



What happens when, mid-proceedings, evidence comes to light that radically alters the landscape of a claim? And who pays the costs?

In *Gaskin v Chorus Law & Ors* Trevor believed his mother Eileen died without a will. If so, he was entitled to an equal share of her estate along with his two sisters. But his apparent interest was extinguished when a valid Will appeared mid-way through his application to remove the personal representatives. Even though technically he lost, he managed, nevertheless, to recover most of his costs and avoid paying anyone else's.

Background

When Eileen died in 2012, her children, Trevor, Marquita and Monica searched in vain for a will. Failing to find one, in early 2013 they agreed that Marquita should instruct Chorus Law, a probate company, to assist her obtain a grant of representation.

Chorus Law took out a grant (as attorney for Marquita) in September 2013. However, two years passed and the primary asset, Mrs Gaskin's home, remained unsold. Marquita claimed to be clearing it, but Trevor believed she was living there rent free. Trevor failed to get a satisfactory response from Chorus Law or Marquita. So in March 2016 he issued an application for him to replace Chorus Law as personal representative.

In June 2016 Marquita's solicitors discovered a 1974 Will that appointed her both the sole executor and sole residuary beneficiary, extinguishing Trevor's interest.

There followed a period of uncertainty, investigation and various applications to the court (the '**investigation phase**'). In May 2017, the court revoked the grant to Chorus Law. It also gave Trevor a month to amend his claim if he wanted to challenge to the validity of the 1974 Will. He did not, and so Marquita proved the 1974 Will.

There then followed a dispute over costs (the '**costs phase**').

Allocating costs

Marquita considered herself the successful party in the litigation and argued that Trevor should pay her costs. The court, however, adopted a more nuanced approach. Pulling up stumps, instead of pursuing a weak challenge, undoubtedly helped Trevor.

Trevor's original application plainly attracted the court's sympathy. Master Clarke said that where there is a delay of more than 12 months in realising an asset the onus is on the personal representatives to show some valid reason. Trevor had not known of the existence of the 1974 Will at the time he issued his application and he was entitled to pursue his interest. His application was justified and so Chorus Law and Marquita each had to pay 50% of his costs up to the date the 1974 Will was found.

Costs of the subsequent investigation phase were more complicated. But Master Clarke said it is reasonable for a party to take some time to consider and investigate a Will which appears during the course of proceedings. In this case, she thought six months was appropriate and allowed Trevor his costs for that period.

Finally, Master Clarke allowed Trevor his costs of the costs phase from the estate because he was justified in resisting paying costs to the other parties.

Lessons

Marquita's own costs and responsibility for Trevor's costs (either personally or through the estate) mean she will see much less of her mother's estate than she would otherwise have done.

Master Clarke's guidance on the timeframe within which assets should be realised by personal representatives has attracted attention. However, this judgment is also a helpful authority for the proposition that costs should be viewed in the context of what was known when they were incurred, not simply what is known at the conclusion of proceedings.

Authors

Paul Hewitt

PARTNER | LONDON

Trust and succession disputes

 +44 20 7597 6197

 paul.hewitt@withersworldwide.com

Sarah Aughwane

ASSOCIATE | LONDON

Trust and succession disputes

 +44 20 7597 6828

 sarah.aughwane@withersworldwide.com