

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION

IN THE MATTER OF THE WILL OF WILLIAM CRAWFORD, DECEASED

BETWEEN:

EILEEN LAVERTY

Plaintiff

and

CECIL ORR

Defendant

WEATHERUP J

The application

[1] This construction summons concerns the will of William Crawford deceased by the terms of which he appointed the defendant his sole executor. The will provided –

“I leave everything that I die possessed of to my daughter Mrs Eileen Laverty for her life and then to her family in equal shares subject to my said daughter paying to my wife Mrs Ellen Crawford the sum of Fifty Pounds”.

[2] The issue concerns the meaning of the words “her family” and in particular whether they refer to the children of the plaintiff or whether they include the husband of the plaintiff.

[3] The deceased made his will on 4 April 1975 and died on 26 June 1975. The defendant extracted a Grant of Probate on 6 October 1977. The plaintiff is now aged 56 years and is the only daughter of the deceased and Ellen Crawford deceased. The plaintiff married on 6 October 1970 and has never had any children. Ellen Crawford survived the deceased and died intestate on 9 October 1978. She had one son James Smyth by a previous marriage and he died intestate on 9 August 1999 survived by five children.

The alternative interpretations

[4] The plaintiff submits that there are three possible approaches to the interpretation of “her family” in the will of the deceased. The first approach, and the one advanced by the plaintiff, is that the words mean the husband and children of the plaintiff. In that event the property will pass to the plaintiff’s husband after the plaintiff’s life interest.

The second approach is that the words mean the plaintiff’s children only. In that event, there being no children of the plaintiff, there will be a failure of the remainder and a partial intestacy. Intestate succession to the deceased would be to the estate of his widow Ellen Crawford and also to the plaintiff in accordance with the statutory provisions as to intestacy prevailing at the date of death. The interest of Ellen Crawford’s estate would pass on her intestacy to the plaintiff as her daughter and also to the estate of her son James Smyth and thereby to his five children.

The third approach is that the meaning of the words is uncertain and the gift in remainder is void for uncertainty. In that event the property would again pass on a partial intestacy.

The five children of James Smyth were made notice parties to this application but none has appeared.

The general approach

[5] The following principles are applicable in the circumstances -

(i) The general principle applicable to the construction of the will is that effect must be given to the intention of the testator as declared and apparent in his will. In cases of uncertainty or ambiguity the court places itself in the testator’s position at the time when he made his will and takes account of all the facts that were known to him at that time. Williams on Wills 8th Edition paragraph [49.1] and Grattan on Succession Law in Northern Ireland paragraph 5.36.

(ii) There is a presumption that the testator did not intend to die either totally or partly intestate, provided that on a fair and reasonable construction there is no ground for a contrary conclusion. Williams paragraph [51.1].

(iii) The primary meaning of “family” in a will is children, and other relatives are excluded. However the circumstances may establish a wider meaning. Williams paragraphs [79.1] and [79.2].

The authorities on “family”

[6] The primary meaning of “family” in a will is children, and other relatives are excluded.

(a) In Pigg v Clarke [1876] 3 Ch D 672 the testator directed the interest arising from his property to be paid to his wife during her life and after her decease to be equally divided among all his family that should then be living when they should attain the age of 21 years. It was held that the word “family” meant that only children could take. Jessel MR stated at page 674 –

“The word ‘family’ has various meanings. In one sense it means the whole household, including servants, and perhaps, lodgers. In another sense it means everybody descended from a common stock, that is to say, all blood relations; and it may, perhaps, include the husbands and wives of such persons. In the sense I have just mentioned, the family of A includes A himself; A must be a member of his own family. In a third sense, the word includes children only; thus when a man speaks of his wife and family he means his wife and children.

Every word which has more than one meaning has a primary meaning; and if it is a primary meaning, you want a context to find another. What, then, is the primary meaning of ‘family’? It is ‘children’; that is clear upon the authorities which have been cited; and independently of them, I should have come to the same conclusion. I hold, therefore that the children of the testator can alone take under the words ‘my said family’.”

(b) Pigg v Clarke was followed in Ireland in Donnelly v Moore [1916] 1 IR 255. The testator bequeathed his farm to his nephew and “if he does not marry and have a family at his death” there was a gift over. The nephew left a widow and no children and it was held that the gift over took effect. Barton J stated that in the construction of bequests it was settled that the primary meaning of the word “family” was children “unless the context or the circumstances shows that it has a wider or a different meaning”. There was no wider or different meaning arising from the context or the circumstances. Indeed the particular words quoted above do read as if the reference to family means only the children of the marriage and not the partner of the marriage.

(c) In Woods v Woods [1836] 40 ER 429 a testator devised his property to sell and discharge his creditors and left the surplus to his wife towards her support and her family. On a dispute as to whether “family” meant only the eldest son or all the children the court held that in the context of a sale of the property “family” could not be confined to the heir but included the other children.

(d) In Re Battersby’s Trusts [1896] 1 IR 600 the testator bequeathed his property to his wife for life and after her death to his brothers and sisters “or unto the families of such of them as shall be then dead”. It was held that “families” included children but did not include grandchildren.

[7] The primary meaning of “family” may be displaced by the context or circumstances of the will.

(a) In Blackwell v Bull [1836] 48 ER 274 the testator directed his business to be carried on by his wife and son for the mutual benefit of the family. It was held that “family” included the testator’s wife.

Lord Langdale MR stated that “in the case of a will we must endeavour to ascertain the meaning in which the testator employed the word, by considering the circumstances and situation in which he was placed, the object he had in view, and the context of the will”.

The court found that the provision for ongoing business did not contemplate severance or separation of the family or the property.

(b) In Drew v Drew [1899] 1 Ch D 336 the testator bequeathed his residuary estate to be invested for his son “and his family” towards the maintenance of his son “his wife and children”. It was held that this included the son’s second wife who survived him. In the context of the whole of the will it was found that “family” was used in a wide sense which included any wife of the son for the time being.

Stirling J stated “Looking at the whole of the will I think that there is here sufficient context to take the case out of the general rule.”

(c) In James v Lord Wynford [1854] 65 ER 431 the testator excepted from the operation of his will the property which he might derive from his aunt or any of her family. This exception was held to include the father of the testator’s aunt. Sir John Stuart V-C was not referred to any authority for limiting the meaning of family to children but he found that “the father of the testator’s aunt was one of the family in the sense in which the words seem to have been employed”.

The circumstances and context of the present case

[8] In the present case the plaintiff submits that the circumstances of the case and the context of the will indicate that the meaning of “her family” includes the husband of the plaintiff as well as any children of the plaintiff.

The particular circumstances and context are said to be that the testator was a father leaving property to a daughter and her family rather than the testator being a husband.

Further, that the daughter was known by the testator at the date of the will to be married and therefore to have a husband who at that time would constitute her family.

Further, that while at the time of the will the plaintiff and her husband had no children the testator intended to include any children to be born in the gift to her family.

[9] The words “her family” contained in the will of the testator have the primary meaning of her “children”. Do the suggested circumstances and context displace the primary meaning?

A father leaving a life estate to a married daughter and then to her family will know of the possible survival of the daughter’s husband. A husband leaving a life estate to his wife and then to the family will know that only the children can survive (unless the widow remarries). I do not accept that the testator being a father leaving property to a daughter and her family, rather than a husband leaving property to a wife, creates a circumstance or context that alters the primary meaning of family.

In the circumstances known to the testator the plaintiff had a husband and no children. It is apparent that the testator anticipated that the plaintiff would have a child or children because (even if the husband were to be included in her family) the remainder was to be held “in equal shares”. At the date of the will the primary meaning of family and the common meaning would have been that the plaintiff had a husband but no family.

While it is clear that children were included, the existence of the husband does not mean that he was included, and neither do the facts that the daughter was married and had no children at the date of the will mean that the husband was included.

The authorities set out above illustrating a wider meaning of family than children each depend on circumstances and context. There are no such circumstances or context in the present case to displace the primary meaning of family.

[10] Accordingly the meaning of the words “her family” in the will of the deceased retains the primary meaning of “children” and does not include the plaintiff’s husband.

