New Intestacy Developments in the United Kingdom: Supreme Court Rectifies a Questionable Will to Avoid an Intestacy and New Intestacy Legislation

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Some new developments in the area of intestacy in the United Kingdom in 2014 may be of interest to estate practitioners in other common law jurisdictions. In *Marley v. Rawlings*[1] the Supreme Court of the United Kingdom chose to rectify a Will instead of finding intestacy; the result being that the testator's sons received nothing and the entire estate passed to a non-relative pursuant to the testator's intentions. Also, the new *Inheritance and Trustees Powers Act 2014* c.16 came into force on October 1, 2014 which made some significant changes to who will inherit, and the what they will inherit, in an intestacy in the UK.

Marley v Rawlings

Alfred and Maureen Rawlings executed short wills that were identical in terms. Each spouse left his or her estate to the other, but, if the other had already died, the entire estate would be left to Terry Marley. Mr. Marley was not related to the Rawlings but they treated him as their son. By an oversight however, the solicitor had each spouse execute the other spouse's will. Even though the wife died in 2003, no one noticed the error until the husband died in 2006.

[1] 2014 UKSC 2.

The Rawlings' two sons argued that Mr. Rawlings' Will was invalid and that they should inherit under the intestacy legislation. In probate proceedings the Court found the Will was invalid and dismissed Mr. Marley's claim for rectification of the will on the grounds that i) the Will was not a "will" as it did not satisfy certain requirements of the *Wills Act* 1837 (including that the will must be signed by the testator) and ii) even if it had, it was not open to the Court to rectify the Will under the *Administration of Justice Act* 1982 (Section 20 allows for the rectification of a will only if the testator's intentions were not carried out due to a clerical error or a failure to understand his or her instructions).

The Court of Appeal upheld the decision namely on the first ground that the Will did not satisfy the requirements laid out in the *Wills Act* 1837. Mr. Marley appealed to the Supreme Court.

After reviewing the facts and circumstances surrounding the execution of the Will, Lord Neuberger, writing for the majority, concluded that:

> . . the present circumstances seem to give rise to a classic claim for rectification. . . [t]here can be no doubt as to what Mr. and Mrs. Rawlings wanted to achieve when they made their will and that was that [Mr. Marley] should have the entirety of their estate and that [their sons] should have nothing. . .Thus, there is certainty as to what Mr. Rawlings wanted, and there is certainty as to how he would have expressed himself (as there can be no doubt that he would have signed the will prepared for him if he had appreciated the mistake).[2]

Responding to the argument that the Will could not be rectified as it did not meet the requirements of a "will", Justice Neuberger stated:

> It is true that the Will purports in its opening words to be the will of Mrs. Rawlings, but there is no doubt that it cannot be hers, as she did not sign it; as it was Mr. Rawlings who signed it, it can only have been his will, and it is he who is claimed in these proceedings to be the testator for the purposes of [the *Wills Act* 1837]. . .It does not appear to me that a document has to satisfy the formal requirements of [the *Wills Act* 1837], or of having the testator's knowledge and approval, before it can be treated as a 'will' which is capable of being rectified pursuant to the [*Administration of Justice Act* 1982].[3]

In answer to the argument that this was not a 'clerical error' capable of rectification, Justice Neuberger stated:

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[2] *Marley v. Rawlings* 2014 UKSC 2 at para.54.
[3] *Marley v. Rawlings* 2014 UKSC 2 at para. 60.

> If, as a result of a slip of the pen or mistyping, a solicitor (or a clerk or indeed the testator himself) inserts the wrong word, figure or name into a clause of a will, and it is clear what word, figure or name the testator had intended, that would undoubtedly be a clerical error which could be rectified under section 20(1(a) [of the *Administration of Justice Act* 1982]. It is hard to see why there should be a different outcome where the mistake is, say, the insertion of a wrong clause because the solicitor cut and pasted a different provision from that which he intended. Equally, if the solicitor had cut and pasted a series of clauses from a different standard form from that which he had intended, I do not see why that should not give rise to a right to rectify under section 20(1)(a), provided of course the testator's intention was clear.[4]

The Supreme Court allowed the appeal and held that the Will should be rectified so that it reflected Mr. Rawlings name instead of Mrs. Rawlings. Mr. Marley inherited the entire estate and the deceased's two sons inherited nothing.

The *Inheritance and Trustees Powers Act, 2014*

Of related interest is the new *Inheritance and Trustees' Powers Act 2014* c.16 which came into force on October 1, 2014. Significant changes include where a deceased leaves no issue, the residuary estate is to pass to a spouse or civil partner absolutely. Also, where there are issue, the surviving spouse or civil partner acquires the personal chattels (all tangible movable property except money, as per a new definition); a statutory legacy of £250,000; and half of the residue of the estate absolutely. Previously the legislation only provided for a life interest in the half of the residue. The remaining half of the residue goes to the surviving issue on statutory trusts. The statutory legacy of £250,000.00 will be index linked and regularly reviewed, unlike Ontario's preferential share of $200,000.00 under the *Succession Law Reform Act*, R.S.O. 1990, c.S.26 (*SLRA*).

Also, the new legislation provides some protection for adopted children and unmarried fathers, and trustees are provided with new powers, including the ability to pay out as much income as they see fit (previously they had to provide due consideration of certain circumstances including the beneficiary's age etc.) and the new act changes the amount and type of advancements that trustees can make.

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[4] *Marley v. Rawlings*, 2014 UKSC 2 at para. 72.

The new legislation did not, however, make any changes allowing for a common-law spouse to inherit under an intestacy, which remains in line with Ontario's *SLRA*. However, common-law spouses in the UK may be able to make a claim against the deceased's estate for a reasonable financial provision, also similar to dependant support claims in Ontario. Overall the new act revised aged legislation to reflect modern family dynamics and surviving spouses and civil partners will benefit from these changes.