



A&R. Deathbed Gifts

King ~v~ Chiltern Dog Rescue & Anor [2015] EWCA Civ 581

After the Testatrix (June Fairbrother) passed away her nephew (Kenneth King) claimed that through her words and actions in the months preceding her death June had transferred her property (i.e. the bulk of her estate) to him by a donatio mortis causa (DMC) the effect of which was to negate gifts to various charities and other beneficiaries. Kenneth succeeded in establishing a DMC at first instance (King ~v~ Dubrey and Others [2014] EWHC 2083) but that decision was appealed by two of the charity beneficiaries whose appeal was successful.

The Facts

Kenneth's claim for a DMC was based both on conversations that he claimed took place between himself and June in the months preceding her death and on actions taken by her during that period.

He cited a conversation during which, when referring to her property, June said "This will be yours when I go" whilst at the same time handing over the deeds of her house. Kenneth also referred to several notes and documents, claimed to have been written both before and after that conversation one of which purported to be a Will (but which was not witnessed) leaving June's estate to Kenneth on condition that he took care of her numerous pets for the rest of their lives.

The Judge in the first instance did not find it easy to accept Kenneth's evidence but accepted his version of events on the relevant issues due to the corroborative documentary evidence. On appeal Lord Justice Jackson considered and clarified the law regarding DMCs. He stated that to establish a DMC it is generally accepted that:-

1. The gift is made in anticipation of death.
2. The gift is made on the understanding that when the Donor dies the Recipient of the gift shall keep it.
3. If the Donor survives he / she shall retain the gift.
4. The Donor may revoke the gift at any time before death.
5. If the Recipient dies before the Donor, the Donor shall retain the gift.

He then summarised those principles to three points:-

1. The Donor contemplates his / her impending death.
2. The Donor makes a gift that will only take effect if he / she dies as contemplated and until that time the gift may be revoked.
3. The Donor delivers dominion over the subject matter of the gift to the recipient.

In order to ensure that DMC is kept within its “proper bounds” he clarified that:-

1. The Donor should be “contemplating death in the near future for a specific reason”. That is not to say that death is inevitable but that the donor is contemplating that very real risk.
2. The gift only takes effect if the Donor dies but will “lapse automatically if [the Donor] does not die soon enough”.
3. Whilst the term “Dominion” is difficult to understand it should mean “physical possession of (a) the subject matter or (b) some means of accessing the subject matter or (c) documents evidencing entitlement to possession of the subject matter”.

Whilst various issues were raised by the Appellants about Kenneth’s honesty and his version of events it did not prove necessary for the Court of Appeal to make a finding on that specific point which it was evidently reluctant to do having not heard evidence direct from the parties.

Lord Justice Jackson then considered the requirements as set out above in turn. Regarding the first, he concluded that June was not contemplating her impending death at the relevant time. She had not been diagnosed with any life threatening condition and was not about to undergo surgery which may have been a cause for any concern. Had she wished to make substantial changes to the disposal of her assets as suggested by Kenneth she could have easily consulted professionals to put those changes into effect. As such Lord Justice Jackson concluded that the first requirement to establish a DMC was not satisfied and immediately therefore the Appeal by the Charities must succeed.

He did continue to consider the remaining requirements and concluded with regard to the second that the term “this will be yours when I go” that Kenneth had claimed June used was more consistent with a testamentary intent than a gift conditional upon her death. Furthermore the later “Will” document albeit ineffective suggested that June considered that she could still freely dispose of her property by Will rather than having already gifted it to Kenneth.

Regarding the third requirement he was content that this had in fact been satisfied and that if the first and second had also been satisfied then the handing over the deeds to Kenneth by June constituted delivery of dominion for the purpose of a DMC.

Comment

This is an obscure area of the law and it is unusual that two cases should have been decided within a year. No doubt initially some comfort was taken by the Claimant in this case following the decision in Vallee ~v~ Birchwood and it is surprising that the Court of Appeal should comment so specifically that that decision was incorrect. The outcome of the appeal was possibly not altogether surprising. A policy decision perhaps given that an endorsement of the first instance decision following on so soon after Vallee ~v~ Birchwood would appear to some to have set a dangerous precedent which would almost certainly have seen an increase in questionable claims seeking to establish a DMC and thereby undermining the statutory safeguards.

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