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Scarle v Scarle – who died first?

Judgment was handed down in the case of ***Scarle v Scarle HC-2017-002117*** on 13 August 2019.

The bodies of John and Marjorie Scarle were found at their home address on 11 October 2016. It was a second marriage for both of them. John had a daughter, Anna, and Marjorie had a daughter, Deborah from previous relationships. The issue in contention between Anna and Deborah was who died first. As all of their assets were owned jointly, if John had died first, Marjorie would have inherited his estate and, on her death, it would pass to her daughter, Deborah. If Marjorie had died first, John would have inherited his estate and, on his death, it would pass to his daughter, Anna.

John was 79 whilst Marjorie was 69 when their bodies were found. Central to the issue in question was section 184 of the Law of Property Act 1925. That section provides that where the order of death is uncertain, the presumption will be that the older party died first. Anna therefore had to rebut this presumption and prove that it was Marjorie, the younger party by some 10 years, who died first. Her evidence was that whilst John was older, he was the healthier of the two and indeed cared for his wife who had suffered a brain haemorrhage and stroke in the 1990s which affected her mobility. There was evidence that her health had significantly deteriorated in the year or so before her body was found. Anna also argued that Marjorie's body showed more advanced signs of decomposition than her father's suggesting that she died first.

The judge found that there was simply not enough evidence to rebut the presumption set out in the Law of Property Act 1925. Deborah had provided evidence of John's deteriorating health in the months leading up to his death. Further, there was some expert evidence that indicated that the differing rates of decomposition could be explained by the different locations in which the bodies were found. Marjorie was found in the bathroom whilst John was found in the lounge.

The decision was therefore that the statutory presumption applied, meaning that John had died first meaning that Marjorie inherited the assets and on her death they passed to Deborah in accordance with her Will.

This was an extremely sad and tragic set of circumstances that led to two step-sisters battling it out in Court. It was an "all or nothing" case for both of them in that one would walk away from the trial with all of the jointly owned assets. In cases such as these, settlement should always be considered to avoid the risk of a trial and for the loser to mitigate against the possibility of having to pay their own legal fees as well as the fees of their successful opponent.

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It is another case that involves the application of a law that was enacted nearly a century ago. The Law Commission is currently considering making significant changes to some laws relating to Wills and probate including the Wills Act 1837 and the test for testamentary capacity as set out in the 1870 case of ***Banks v Goodfellow.*** Perhaps Section 184 of the Law of Property Act 1925 is another law that should be carefully considered in light of medical advances and societal changes. If Anna had not had to rebut the presumption that her father had died first, the result may have been different.

The Contentious Trusts & Probate Team at Meridian Private Client LLP assists individuals with any contentious probate scenario that they may encounter on the death of a loved one. Our contact details are set out below:

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