

Some Appealing Decisions – a busy few months for the Court of Appeal

Several relatively significant decisions have been received from the Court of Appeal over the past few months, or are expected shortly:

RSCPA v Sharp and others [2010] EWCA Civ 1474 is a case which was considered in some detail by Helen Clarke in our last e-alert in relation to a report on the decision at first instance in the High Court.

The RSPCA has now successfully appealed against that decision, with the Court of Appeal concluding on an analysis of the terms of the Will that the testator had intended that the gift of his home should be taken into account in calculating the value of the NRB gift made under the will, with the effect that the overall value of the gift to his friends and relatives was reduced (with a consequential reduction in IHT payable) and an increased share of the estate to be received by the RSPCA who were the residuary beneficiaries.

The RSPCA were also involved in another appeal, albeit this time less successfully. In *Gill v Woodall and others* [2010] EWCA Civ 1430 the Society were challenging a finding in the High Court that a Will should be set aside on the grounds of undue influence by the husband of Mrs Gill, the testatrix.

Under the Will, executed as a mirror Will with her husband, Mrs Gill's only daughter was disinherited (on the basis that she had already been well provided for) and her residuary estate was left to the RSPCA. At the trial it emerged that Mrs Gill had suffered from agoraphobia and following evidence from a number of witnesses, including a psychiatrist, the High Court had provisionally concluded that Mrs Gill had not known and approved of the contents of her Will. The High Court then found, however, that this provisional conclusion could be set aside in light of Mrs Gill's attendance at certain meeting with the solicitors who prepared the Will. The High Court found, however, that undue influence on the part of the husband required the Will to be set aside.

On appeal, the Court of Appeal ruled that the High Court, having come to the conclusion that Mrs Gill did not know or approve of the contents of her Will, was not entitled to set that conclusion aside on the basis of the other evidence relied upon by the RSPCA. The Court was therefore not prepared to grant the RSPCA's appeal, and the Will was set aside.

While the *Gill* case was unusual in that the Court found that Mrs Gill was suffering from an unusual condition which impaired her understanding of the Will, but which would not have been apparent to a solicitor on meeting her, both this case and *Sharp* serve, in their own ways, to underscore the importance of care and caution in the preparation and execution of a Will.

Futter v Futter and *Pitt v Holt* were heard as conjoined appeals by the Court of Appeal in November. The hearing was significant because it was the first occasion on which the Court of Appeal has had an opportunity to consider the *Hastings-Bass* principle since its decision in the *Hastings-Bass* case itself. Since then the principle has been subject to great deal of consideration but only, in this jurisdiction, at first instance, so it will be interesting to see whether the Court of Appeal takes this opportunity (as they have been urged to do by HM Revenue & Customs) to reign in the operation and scope of the principle by more clearly defining the circumstances in which trustees may avail themselves of its benefits.

Finally, *R (on the application of Huitson) v H M Revenue & Customs* is a human rights challenge by Mr Huitson to the retrospective operation of s. 58 of the Finance Act 2008 and HMRC BN66.

In each case the outcome may well have significant implications and the Court of Appeal's judgments, reserved in November of last year, are still awaited at the time of writing. We will be circulating a further update with the outcomes of these hearings, as soon as they are known.

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This Article states the law as at 1 February 2011. It is, however, provided for general guidance only and the author accepts no responsibility for any reliance placed upon that general guidance in specific circumstances. If you want to know more about personal or corporate tax planning issues please contact Patrick on the details above.

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