



Neutral Citation Number: [2025] EWHC 115 (Ch)

Case No: PT-2024-000053

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY TRUSTS AND PROBATE LIST (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 3/2/2025

**Before:**

**MASTER CLARK**

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**Between:**

**DAVID LESLIE WHITE**

**Claimant**

**- and -**

**KEITH ELFED WILLIAMS**

**Defendant**

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**David H Smith (of Duffield Harrison LLP) for the Claimant**  
**No attendance by the Defendant**

**Hearing date:** 29 May 2024, followed by written submissions/filings on 20 August and 7  
November 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.00am on 3 February 2025 by circulation to  
the parties or their representatives by e-mail and by release to the National Archives.

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**Master Clark:**

1. This is my judgment on this Part 8 claim, which seeks directions as to the distribution of the estate of Elfed Williams (“**the deceased**”) who died on 11 June 2023, leaving a will dated 31 March 2014 (“**the Will**”).
2. The claimant, David Leslie White, is the sole executor of the Will, to whom probate of the Will was granted on 6 October 2023. The net value of the estate is £393,974.
3. The defendant, Keith Elfed Williams (to whom I refer, without intending any disrespect, as “**Keith**”), is the deceased’s son and a beneficiary under the Will.
4. Clause 4 of the Will provides for two pecuniary legacies totalling £20,000. Clauses 5 and 6 provide:

“5 **I GIVE** all the residue of my estate (out of which shall be paid my funeral and testamentary expenses and my debts) to my Trustees to hold upon the trusts and with and subject to the powers and provisions contained In this Will (and such estate and property and the property which currently represents it is referred to in this Will as “the Trust Fund”)

6 My Trustees shall hold the Trust Fund ON TRUST to divide it or treat it as being divided into six parts of equal value and to hold them on the following trusts and subject to the following provisions:

- (a) My Trustees shall hold those parts ON TRUST absolutely
  - (i) as to one of them for **LINDA ANNE PADDON** of 11 Hickman Close Broxbourne Hertfordshire EN10 7TD PROVIDED THAT if she should die before me then my Trustees shall hold this part for such of her children who survive me and if more than one in equal shares
  - (ii) as to one of them for **EDWARD ALBERT SIMMONS** of 275 Elm Park Avenue Elm Park Hornchurch Essex RM12 4PG
  - (iii) as to one of them for **HARRY FREDRICK SIMMONS I** Hazel Close Noakbrldge Lalndon Basildon Essex SS15 5GT
  - (iv) as to one of them for my sister **EIRWEN HILL** 28 Whiterock Avenue Graigweh Pontypridd South Wales CF37 2EL
  - (v) as to one of them for my son **KEITH ELFED WILLIAMS** who I last knew to live at 86 Gorseway Rush Green Romford Essex RM7 ORX PROVIDED THAT if he should die before me then my Trustees shall hold this part for such of the children of my son **KEITH ELFED WILLIAMS** who survive me and if more than one in equal shares
  - (vi) as to one of them for **MARSDEN WILLIAMS** Old Zion Chapel Flat 2 Trehafod Road Trehafod Pontypridd Rhondda South Wales CF37 2LY

(b) PROVIDED also that if at any time the trusts declared by Clause 6(a) above should fail then from the time of failure that share (and any part or parts of any share which may already have accrued to it under this provision) shall accrue to the other share or shares (and equally if more than one) the trusts of which have not at that time failed and be held on the trusts and with and subject to the powers and provisions affecting such other share or shares”

5. Keith was estranged from the deceased during his lifetime. That estrangement extended to his effectively refusing to accept the gift to him under the Will of one sixth of the residuary estate (“**Keith’s share**”), the value of which is estimated to be over £60,000. Keith has no children.
6. Keith has repeatedly indicated to the claimant’s solicitors that he wants nothing to do with the deceased’s estate. On 13 November 2023, they sent him a Notice of Disclaimer for completion by him, but he has not provided them with a signed copy.
7. The claim was commenced on 22 January 2024. Keith has not filed an acknowledgement of service of the claim form, nor responded to the claim in any way.
8. On 29 May 2024 I made an order recording that I was satisfied that Keith had by his conduct shown an intention to disclaim his entitlement under the Will.
9. In these circumstances, an issue arises as to whether Keith’s share devolves:
  - (1) to be shared between the 5 remaining beneficiaries under clause 6 of the Will;
  - (2) on a partial intestacy between those persons entitled on intestacy (“**the intestacy beneficiaries**”).This in turn depends on whether the word “failure” in clause 6(b) of the Will includes a disclaimer. If it does, then the substitutionary gift provided for by that clause takes effect. If it does not, and the gift to Keith lapses, then it would pass to the intestacy beneficiaries.
10. The claimant’s enquiries have ascertained that the intestacy beneficiaries are
  - (1) Lorna Davies – the only child of the deceased’s sister Frances Williams (herself deceased);
  - (2) Eirwen Hill (née Williams - the deceased’s sister);
  - (3) Marsden Williams (the deceased’s brother).Two of these people are beneficiaries under clause 6 of the Will, but would take a larger share (1/3 as opposed to 1/5) if Keith’s share devolved on intestacy.
11. My order of 29 May 2024 included a direction that the claimant write to the intestacy beneficiaries outlining the position, and asking whether they wished to claim an

entitlement to a 1/3 of Keith's share. Perhaps not surprisingly, they each indicated that they maintained an entitlement as intestacy beneficiaries. Ms Hill expressed the view that clause 6(b) of the Will did not apply to a disclaimer as such.

12. In these circumstances, I directed the claimant to serve on the intestacy beneficiaries:
  - (1) notice of the claim pursuant to CPR 19.13(4)(a)(i) in the prescribed form, Form CH7;
  - (2) the claim form;
  - (3) all evidence filed in the claim;
  - (4) the order dated 29 May 2024 of Master Clark
  - (5) the draft order sought
  - (6) the skeleton argument filed on 20 August 2024.
  - (7) statement of costsand to file certificates of service of these documents. This was done in October 2024. None of the intestacy beneficiaries have filed acknowledgements of service.

## **Legal principles**

### ***Interpretation***

13. For present purposes, it is sufficient to refer to the general principles of interpretation of wills set out in *Marley v Rawlings* [2015] AC 129 at [19] - [22]. At [19] Lord Neuberger said:

“... the court is concerned to find the intention of the party or parties, and it does this by identifying the meaning of the relevant words, (a) in light of (i) the natural and ordinary meaning of those words, (ii) the overall purpose of the document, (iii) any other provisions of the document, (iv) the facts known or assumed by the parties at the time that the document was executed, and (v) common sense, but, (b) ignoring subjective evidence of any party's intentions.”

### ***Disclaimer***

14. Disclaimer is a refusal to accept an interest: *Re Scott, decd* [1975] 1 W.L.R. 1260 at 1271. To use the colourful words of Walton J in *Re Scott*: “nobody can put an estate upon another in spite of his teeth”.
15. As to its effect, at common law the position was, as stated in *Re Scott* at 1271:

“The effect of a disclaimer is not to throw the property on to the scrap heap, but to refuse to accept it in the first place, leaving the ownership with the people or the interest or the estate or whatever, from which it was derived in the first place.”

Thus, in the absence of a substitutionary clause, a disclaimed gift will pass under the rules of intestacy.

16. However, this position was altered by section 33A of the Wills Act 1837, introduced by amendment<sup>1</sup> by section 2 of the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011). This provides, so far as relevant:

**“33A Disclaimer or forfeiture of gift**

- (1) This section applies where a will contains a devise or bequest to a person who—
- (a) disclaims it, or
- ...
- (2) The person is, unless a contrary intention appears by the will, to be treated **for the purposes of this Act** as having died immediately before the testator.”
- (emphasis added)

17. A corresponding amendment was made the rules governing succession on intestacy in the Administration of Estates Act 1925, by inserting as section 46A (again, so far as relevant):

**“46A Disclaimer or forfeiture on intestacy**

- (1) This section applies where a person—
- (a) is entitled in accordance with section 46 to an interest in the residuary estate of an intestate but disclaims it, or
- ...
- (2) The person is to be treated for the purposes of this Part as having died immediately before the intestate.”

18. These amendments were made in implementation of Law Commission Report (No. 295, July 2005) entitled “The Forfeiture Rule and the Law of Succession”. The Commission had been asked to review the relationship between the forfeiture and intestacy rules with reference to the difficulties highlighted in the case of *Re DWS (deceased)* [2001] Ch 568 (CA).

19. In *DWS*, a son killed both his parents, neither of whom had left a will. The forfeiture rule excluded him from inheriting. However, the Court of Appeal decided that the rule operated to exclude not only him, but also his son, from inheriting. The inheritance went instead to the couple’s more distant relatives entitled on intestacy.

20. In its Report, the Law Commission recommended that:

- (1) there should be a statutory rule that, where a person forfeits the right to inherit from an intestate through having killed them, the rules of intestate succession, as laid down in sections 46 and 47 of the Administration of Estates Act 1925 (as

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<sup>1</sup> with effect from 1 February 2012

amended), should be applied as if the killer had died immediately before the intestate (para 3.33 of the Report); and

- (2) Where a person forfeits a benefit under a will through having killed the testator, the will should be applied as if the killer had died immediately before the testator, unless the will contains a provision to the contrary (para. 4.11).
21. This principle was extended to disclaimer, so that the Commission recommended that where a person disclaims an inheritance, either under a will or under the law of intestacy, the inheritance should devolve as if the person disclaiming had died immediately before the deceased (para 4.28 of the Report).
  22. The wording of section 33A, which was enacted in the same form as in the draft Bill annexed to the Report was, as the notes to the draft Bill show, intended to achieve that result.
  23. The editors of *Williams* at 9-17<sup>2</sup> consider, however, that this provision is limited to providing that, for the purposes of section 33 of the Wills Act 1837, the disclaiming person is treated as having predeceased the testator. It does not, in their view, provide that the testator's will has effect for all purposes as if the person disclaiming had predeceased the testator. They regard this as the result of either a drafting error or a misunderstanding of the scope of the Wills Act 1937. The relevant paragraph in *Williams* was referred to in *Macmillan Cancer Support v Hayes* [2017] EWHC 3110 (Ch), [2018] WTLR 243 in which it was suggested that the error might be susceptible to “statutory rectification”: see *Inco Europe Limited v First Choice Distribution* [2000] 1 WLR 586.
  24. As to section 33 itself, it provides that (in both cases, subject to a contrary intention in the will):
    - (1) if a will makes a gift to a child or remoter descendant of the testator, and that beneficiary predeceases the testator, then the gift takes effect as a gift to that beneficiary's issue living at the testator's death; and
    - (2) if a will makes a gift to a class of persons consisting of the children or remoter descendants of the testator, and a member of that class predeceases the testator, then the gift takes effect by substituting the issue living at the testator's death of that class member (who take between the share that their parent would have taken).

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<sup>2</sup> This paragraph discusses the effect of section 33A on the forfeiture rule, but the principles are the same in respect of disclaimer.

25. Section 33 is not concerned with, and does not alter the effect of, an express substitution clause in a will which substitutes other beneficiaries for a primary beneficiary if the latter predeceases the testator. Accordingly, if the reference “for the purposes of this Act” is restricted to section 33, section 33A will correspondingly have no effect on such a clause. It will also not have the general effect on disclaimers set out in the Law Commission's recommendation and intended to be given effect by the provision.

### ***Lapse***

26. I turn to the position if Keith is to be treated as having pre-deceased the deceased.
27. The term “lapse” is generally applied to the failure of a testamentary gift owing to the death of the devisee or legatee in the testator's lifetime: see *Williams on Wills* (11<sup>th</sup> edn) para 47.1 and the cases cited at footnote 1.
28. A lapsed gift of a share of residue passes as on an intestacy: see *Williams* at para 47.6 and the cases cited at footnote 4; and *Srymsher v Northcote* (1818) 1 Sw 566, 570. However, this rule does not apply if the will shows a contrary intention: *Re Allan* [1903] 1 Ch 276; and so, a will may be drafted to provide that, on the death of a legatee, their share passes to some substituted person or persons.

### ***Scope of section 33A of the Wills Act 1837***

29. For the reasons given below, it is not, in my judgment, necessary to decide whether section 33A(2) has effect for all purposes of determining the meaning and effect of a will, or, if not, whether it can properly be subjected to statutory rectification.

### ***Analysis and conclusions***

30. In this case, the court is concerned with two express substitutionary clauses: in clause 6(a)(v) and 6(b) of the Will.
31. If Keith is not to be treated as having predeceased the deceased, then his disclaimer would result in a partial intestacy in respect of his share, unless the Will otherwise provides. However, clause 6(b) provides that if the trusts in clause 6(a) fail, then the failed share accrues to the other shares. In my judgment, the natural and ordinary meaning of the word “fails” extends to a disclaimer, notwithstanding that it does not take place at the date of death, but at a later stage. The gift to Keith would therefore have failed, and the substitutionary provisions in clause 6(b) would apply.
32. If, on the other hand, Keith is to be treated as having pre-deceased the deceased, then since he had no children, then the substitutionary gift to his children also would fail, in

my judgment, within the meaning of clause 6(b); so that that clause would take effect to distribute his share between the other residuary beneficiaries.

33. Accordingly, in my judgment, Keith's  $\frac{1}{6}$  share of the deceased's residuary estate falls to be divided between the other beneficiaries of the residuary estate in clause 6(a).