Neutral Citation Number: [2024] EWHC 3124 (Fam) Case No: 239/23

IN THE HIGH COURT OF JUSTICE
THE PRINCIPAL REGISTRY OF THE FAMILY DIVISION

Rolls Building
7 Rolls Building
Fetter Lane
London
EC4A 1NL

Monday, 5 August 2024

BEFORE:

CHIEF MASTER SHUMAN

BETWEEN:

(1) JAMES PAUL ADDISON
(2) SHIRLEY HELEN RAMSDEN

Applicants

- and -

MICHELLE NIAZ

Respondent

MR N LAMBE (instructed by Forbes Solicitors LLP) appeared on behalf of the Applicants
MS C SWEENEY (instructed by Lewis Mitchell Solicitors) appeared on behalf of the Respondent

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JUDGMENT

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THE CHIEF MASTER:

1. The applicants applied for a summons to be issued under section 122 of the Senior Court Act 1981, requiring the respondent to attend court to ask questions about the making of a will. The respondent took the will instructions and drafted the will. Following that hearing the applicants seek their costs. The court has power to make an order for costs under Rule 63 of the Non-Contentious Probate Rules 1987. That says:

> "On any application dealt with by him on summons, the Registrar shall have full power to determine by whom and to what extent the costs are to be paid."

So that is a wide discretion as to costs in this matter.

2. Mr Lambe, on behalf of the applicants, invites the court to make an order that the respondent pay the applicants' costs. In response, Ms Sweeney on behalf of the respondent, says the appropriate order in this case is to make no order as to costs. She raises in particular that the respondent has provided a witness statement, that she has suffered from significant mental health difficulties which she says is the reason why there has been a regrettable failure to respond earlier in these proceedings.

3. I questioned Ms Sweeney as to whether she was maintaining that the first substantive response to the Larke v Nugus request, made by letter dated 7 July 2023 by Lewis Mitchell Solicitors, was satisfactory. She submitted that it was indeed satisfactory, when taken with the will file as well. Her argument was that the applicants had sufficient information but instead, they have chosen to pursue this summons, to have the respondent cross-examined in court about the making of the will. In addition, she refers me to page 936 in *Tristram and Cootes on Probate Practice* (32nd edn) which is the section specifically dealing with costs, albeit it refers to general rules regarding costs before going on to contentious costs.

4. Going back a stage to the background to this application, Derek Addison had four children. On 12 February 2016, he made a will appointing two of his children, James and Shirley, to be executors and in effect dividing up the estate into four equal shares for each of his children, if his wife predeceased him. I say "in effect" because the will

provided that his home, 9 Anderson Road, was divided up and then the residue divided between the children. The effect, unless there are significant tax consequences, is the same. Derek's wife predeceased him.

5. On 15 November 2021, Derek made the will that is disputed between the children and disputed at a very early stage. In that will, he appointed his other two children, Mark and Julie, to be executors. He divided up all of his estate into four equal shares which were given to each of his four children. The will was witnessed by Michelle Niaz, the respondent, who has given evidence today, and Michelle Wharton, described as a paralegal.

6. On 13 March 2023 Derek died. James, his son, entered a caveat on 20 March 2023 and then the matter has had a very slow and drawn-out process with protracted correspondence between the applicants and the respondent.

7. On 27 March 2023, the applicants wrote to the respondent asking for some information about the will, the *Larke v Nugus*[1] request. On 11 April 2023, they chased for a response. On 20 April 2023, they again chased for a response, as they did on 26 April 2023. On 10 May 2023, the applicants wrote to the respondent warning her that they would make an application for a summons to be issued. They chased again on 11 May 2023. The respondent did respond, but that was simply to acknowledge receipt of the correspondence. So, on 22 May 2023, they again chased for a response, on 31 May 2023 and on 8 June 2023, via telephone. At that stage, a receptionist at Lewis Mitchell solicitors said that the respondent needed more time to respond.

8. The respondent emailed the applicants saying that the executors' consent was required in order for her to respond to their request. The *Larke v Nugus* request is designed to provide pre-claim disclosure and avoid legal costs being wasted in potentially futile litigation. The Law Society has issued practice notes from time to time setting out best practice. Where a request is made the solicitor should disclose information about the circumstances surrounding the preparation and execution of a disputed will. That information should be provided to anyone who has an interest in the dispute, although arguably the class of people making the request might be wider. If the solicitor fails to

[1] Later reported at (2000) WTLR 1033, although the case was before the court in 1979.

respond they may be subject to a costs order, regardless of whether the will is held to be valid or not. Answering such a request may go into privileged or confidential matters and it is good practice to obtain the executors consent.

9. On 16 June 2023, the applicants agreed to give the respondent more time to reply. That deadline passed. The response was finally sent by letter dated 7 July 2023.

10. A *Larke v Nugus* response is a request setting out a number of clear questions which the will drafter should answer, ideally in numbered form so it is clear and also serves as a signpost for the information. Where Ms Sweeney suggests that the letter of 7 July 2023 is a satisfactory response to a *Larke v Nugus* request, I understand that was made on instructions. I do not accept it is satisfactory. The response is a very short summary of the matters that should have been in a far more detailed *Larke v Nugus* form.

11. This matter came before District Probate Registrar Whitby on 9 October 2023. I am told that the applicants had by that stage received the response to the Larke v Nugus request, the letter of 7 July 2023. That letter was placed before the Registrar. She gave directions that record,

> "Upon reading the applicants' section 122 Senior Court Act statements and upon the summons being dealt with in the absence of the parties …"

Paragraph 2 of the order,

> "The respondent may file a statement in court and upon Forbes Solicitors within 14 days of the date of service of this order setting out why she should not be ordered to comply with (1) above or to attend before a High Court judge for the purpose of being examined as to her knowledge of the drafting and execution of the will dated 15 November 2021. Further directions will then be given and alternative costs order made."

12. The significance of that is that paragraph 1 has a mechanism where it could lead to the respondent paying the applicants' costs summarily assessed in the sum of £3,474. So, when Ms Sweeney's points to the satisfactory nature of 7 July 2023 letter, I note that that was not accepted by Registrar Whitby and it is not accepted by this court. Her

position that the respondent has dealt with this request in a timeous way, is also not accepted.

13. Solicitors who are will drafters are expected to disclose information about the drafting of the will. The delays in this case have been lamentable and have not helped these parties one jot in terms of trying to reach a resolution to the matter.

14. The witness statement that has been provided by the respondent raises questions. In particular, it exhibits an attendance note of 11 November 2021. Ms Sweeney in her submissions said the response to the *Larke v Nugus* plus the will file was all the material that the applicants needed. Effectively, I paraphrase, she asserts that this hearing and the pursuit of information from the respondent was unnecessary. When I asked some supplemental questions of the respondent she accepted that a person looking at the attendance note and the will file would not have known that this was a "living attendance note" because it is dated 11 November 2021. It records on the top, "Time, 3.00 pm," and gives a file number. It goes on to record, "Attending to Derek Addison. Matter: Will." Then at the end, "Meeting: 8 units. Attendance Note: 2 units. Time engaged: 10 units."

15. So, the witness statement and the attendance note raise questions. They raise questions because there are inconsistencies between the letter of 7 July 2023 and the witness statement itself. For example, it was suggested in the letter that the deceased was a former client but in the witness statement, it says that he was not. There is no detail as to who made the appointment to attend the office and it was not entirely clear from the attendance note or witness statement that the meeting took place by way of a 45-minute meeting with the deceased. That it was only at the end of the meeting, when the respondent had got to her feet, that Derek became upset and she brought in his son and daughter to comfort him.

16. In a case where there is obviously suspicion about the background to matters, it did not help matters for this witness statement to be not as full as it could have been. The Respondent has now explained matters in her evidence today and set out matters far clearer than is contained in her attendance note or in her witness statement. So, I am satisfied that it was appropriate for the applicants to not only issue the summons but

also to pursue this to hearing today and for the respondent to be cross-examined as she was in this matter. It has, to an extent, clarified matters.

17. In relation to the point that is raised about costs, the court has a wide discretion as to costs in this matter. I do factor in the lengthy chronology where the applicants have tried to get the respondent to engage with their requests. In order to do that and for sufficient information to be provided it was necessary for the applicants to bring this matter to court. I note that the Probate Registrar had considered on 9 October 2023 that warranted costs being summarily assessed at the sum of £3,474 and a conditional order being made against the respondent.

18. In all the circumstances, it is appropriate for a costs order to be made, and I order the respondent to pay the applicants' costs.

Judgment on quantum of costs

19. The applicants invite the court to summarily assess the costs in this non-contentious probate case, the respondent does not resist this but did make submissions on the amount claimed. Although the District Probate Registrar made a conditional summary assessment for costs on 9 October 2023, I do not consider that this constrains the court today. As Mr Lambe submitted, which I accept, paragraph 2, the alternate provision in the directions order applies, and therefore the costs order is at large.

20. The amount claimed by the applicants is £7,709.50 plus VAT on solicitors' fees and counsel's fees of £1,580.80, giving a grand total of £9,290.30. Whilst the 1987 Rules has not been amended to incorporate the overriding objective from the Civil Procedure Rules 1998, rule 3A does provide that

> "the overriding objective of the 1987 rules is to enable non-contentious and common form probate business to be dealt with justly and expeditiously by the court and the registry."

Rule 3 specifically applies the Rules of the Supreme Court 1965 to the 1987 rules.

21. Exercising the court’s wide discretion on costs, I do not consider that the costs schedule is entirely proportionate and reasonable to the issues before the court and therefore I will go through the costs claimed in more detail.

22. It does seem to me that attendances on the applicants is unduly high. Although I do not accept Ms Sweeney's submission that only one hour for attendances on the applicants should be allowed. I also consider that attendances on others is a little high, as is the work done on documents. There seems to me a potential duplication of costs between the amount paid to counsel for an advice, conference and documents and the work carried out by the solicitors in this matter. I also bear in mind that this is a one-hour hearing, although to be fair that Mr Lambe had indicated that it should be listed for a longer period.

23. Although it is relatively rare for this type of case to come to court and for a solicitor to be cross examined under the procedure in section 122 of the Senior Courts Act, it is still a relatively straightforward case under the non-contentious probate rules. The procedure is designed to try and locate testamentary documents and also to have, where necessary, a better understanding as to the events surrounding the making of a will.

24. I will reduce the costs down to the sum of £4,774.50 which, when 20 per cent is added, comes to a grand total of £5,729.40.

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