



Neutral Citation Number: [2019] EWHC 2508 (Ch)

Case No: PT-2019-BRS-000060

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

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 27 September 2019

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

In the matter of Leslie Roger Irish

And in the matter of the Presumption of Death Act 2013

Between:

(1) Ruth Helen Irish
(2) David Roger Irish
- and -
No Defendant

Claimants

Defendant

Matthew Wales (instructed by **Gilbert Stephens LLP**) for the **Claimants**

Hearing dates: 23 September 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ Paul Matthews :

1. This short judgment concerns a procedural issue which arose in a claim under the Presumption of Death Act 2013. On 25 October 2016 Leslie Roger Irish disappeared from his home at Heavitree in Exeter, Devon. Two days later his car was found parked by the coast at Branscombe Beach, also in Devon, and his rucksack was found on a nearby beach. He – or his body – has never been found, and all inquiries since then have drawn a complete blank. On 23 July 2019 the claimants, the two adult children of Mr Irish, issued this claim under Part 8 of the Civil Procedure Rules for a declaration that he is presumed to have died.
2. The procedure for such a claim is governed by CPR rules 57.17 to 57.23 and Practice Direction 57B. Paragraph 1.4 of the practice direction requires that “a claim ... for a declaration of presumed death ... must be listed for case management directions” within certain time limits. The purpose of this directions hearing is at least twofold. First, it enables the court to check that all the requirements of the Act and the relevant CPR have been complied with. Second, if (whether as a result of the notifications of the proceedings or the advertisement in the press) any person does come forward wishing to intervene in the claim, the court can give directions as to filing and service of evidence, and any other relevant matters connected with the intervention.
3. In this case, the compulsory directions hearing was listed for 23 September 2019. At that hearing, the claimants appeared by counsel and solicitors (although they were also present personally in court). It was apparent from the papers that all the persons who should be notified of the claim had been so notified and that advertisement had taken place in a local newspaper. (In fact, because of problems with the electronic issue of the claim, the notifications and advertisement were slightly out of time, and I extended time accordingly under the court’s case management powers.) No one had come forward in response to indicate a wish or intention to intervene in the proceedings, and those who had responded were content for the declaration sought to be made. The claimants’ solicitors had prepared and lodged a bundle suitable for a disposal hearing, and their counsel had filed a skeleton argument and draft order intended to lead to the declaration which the claimants asked for.
4. The question which accordingly arose was whether in the circumstances the court could proceed immediately from the directions hearing to a disposal hearing on the same occasion. In an ordinary Part 8 claim, it is common to list the first hearing as for “directions or disposal”, because, depending on what happens immediately before and at the first hearing, it may be possible for the court to dispose of the matter there and then, or it may be necessary to give directions for the future disposal of the claim. This course is given statutory sanction by paragraph 4 of Practice Direction 8B to the Civil Procedure Rules. And it is interesting that, in the (new) parallel jurisdiction to appoint a guardian of a missing person, under the Guardianship (Missing Persons) Act 2017, CPR rule 57.27(2) requires that there be a “first hearing” of the claim, rather than specifically a directions hearing. But, in claims under the 2013 Act, the relevant practice direction (57B) provides, as already mentioned, for a compulsory directions hearing, and contemplates a further, final hearing of the claim.
5. Counsel for the claimants submitted that the case was ready for disposal. The evidence showed that all the requirements had been met, that no one sought to intervene, and there was no need for any further directions, except to list the matter

Approved Judgment

for disposal. He submitted that the court had power to proceed immediately to dispose of the claim. There was no-one (apart from the claimants) who needed to be notified of the final hearing because no-one sought to intervene. If any direction was needed, it was one that the disposal hearing should follow immediately. There were no countervailing factors to delay that hearing. He submitted that the court had power to act upon its own initiative and make an order subject to a provision for applications to vary or set aside subsequently: see CPR rule 3.3(4), (5).

6. However, it seemed to me that this was not really a case for the court to make an order on its own initiative, but instead to exercise the case management powers contained in CPR rule 3.1, on the basis that the only parties to the claim were before the court and consented to such exercise, there being no one else who was seeking to take part. The relevant paragraphs seemed to me to be (2)(b) (power to bring forward a hearing) and (m) (power to take any other step or make any other order for the purpose of managing the case and furthering the overriding objective). Counsel agreed that these powers were also available.
7. I was satisfied that it was appropriate, in the circumstances that the matter was ready for disposal and that no one was seeking to intervene, to exercise the case management powers under CPR rule 3.1(2)(b) and (m), to proceed immediately to hear and dispose of the substantive claim straightaway, and accordingly did so. I emphasise that it will not always be appropriate for the court to take this course. If statutory requirements are still to be fulfilled, directions given, or persons notified, the matter should proceed to a final hearing in the usual way. At the hearing I said that, because the point seemed to me to be a new one, and it may save time and help others in future, I would give short written reasons for my decision to take this course after the hearing. These are those reasons. It is not necessary for me to go further into the evidence or discuss the particular case further, except to say that, in the event, I made the declaration sought.