IMPORTANT NOTICE

This judgment was delivered in open court. The judge has given leave for this version of the judgment to be published but the anonymity of the minor child of the family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Neutral Citation Number: [2022] EWHC 1638 (Fam)

Case No: FD22F00004

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Hybrid hearing from the Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 14 June 2022

Before :

Mr Justice Moor

- -

Between :

Karen Anne Paul
Claimant

-and-

James Alexander Paul
First Respondent

-and-

Sebastian Maximillian Johann Paul
Second Respondent

-and-

Yasmin Nicole Paul
Third Respondent

-and-

AIP (by her litigation friend, Emma Williams)
Fourth Respondent

-and-

Danielle Jayes and Anthony Robert Jayes
(as Executors of the Estate of Steven Paul, deceased)
Fifth and Sixth Respondents

- - - - - - - - - - - - - - - - - - - -
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Mr Julian Reed for the **Claimant**
The **First Respondent** appeared in person
The **Second Respondent** did not appear and was not represented
The **Third Respondent** did not appear and was not represented
Mr Thomas James for the **Fourth Respondent**
The **Fifth and Sixth Respondents** did not appear and were not represented

Hearing dates: 13th and 14th June 2022

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JUDGMENT

MR JUSTICE MOOR:-

1. I have been hearing an application dated 6 May 2021 by Karen Anne Paul (hereafter "the Claimant") for reasonable financial provision from the Estate of her late husband, Steven Paul (hereafter "the Deceased") and a declaration that their matrimonial home, 47 Freshfield Bank, Forest Row, East Sussex is held on a constructive trust for herself and her late husband's Estate as to 50% each.

2. The Deceased, Steven Paul, was born on 28 September 1954. He was an international fencer who competed for Great Britain at the Summer Olympics in 1980, 1984 and 1992. He was the Head Coach, from which he earned his living, and Chairman of the Tunbridge Wells Fencing Club. In 2015, he was diagnosed with Motor Neurone Disease. He suffered a serious fall in April 2019 whilst on holiday in Spain with the Claimant and their two children. The Claimant arranged for him to be flown home. He died in Tunbridge Wells Hospital on 26 April 2019. He was 64 years of age.

3. The Deceased had previously been married to an Australian woman, Marisa Fitzgerald. They had two children, both now adult. The First Defendant, James Paul was born on 15 August 1986 and is now aged 35. The Second Defendant, Sebastian Paul, was born on 28 December 1989, so he is aged 32. The Deceased's first marriage broke down in 1991 and he returned to the UK from Australia. James says that the boys joined him here the following year but the Claimant says they came later.

4. The Claimant and the Deceased commenced cohabitation in Belsize Park, London in 1996. The Claimant was born on 24 September 1972, so she is now aged 49. She was a self-employed corporate trainer but is now employed as a school receptionist. She says that James joined them in Belsize Park later in

1996 and Sebastian also came over to live with them in 1997. They married on 4 July 1998.

5. There are two children of the marriage. On 7 May 1999, the Third Defendant, Yasmin was born. She is now aged 23. She is currently travelling abroad but, when she returns, she wishes to train as a landscape gardener. The Fourth Defendant, AIP is aged 16. She attends a fee paying school in the South of England.

6. On 15 October 2002, the Claimant and the Deceased purchased a property at 5 Belvedere, Eastbourne in their joint names for £265,000. In 2006, the two boys returned to live in Australia. They have been there ever since. On 26 July 2011, 5 Belvedere was transferred into the Deceased's sole name so that it could be re-mortgaged to enable the parties to purchase what became their final matrimonial home at 47 Freshfield Bank. Freshfield Bank was purchased on 11 August 2011 for £380,000, again in the sole name of the Deceased. It appears that they wanted to purchase the property in joint names but, initially, the mortgage was treated as buy-to-let mortgage and the mortgage company would only give a mortgage to the Deceased. As a result, the new property was also purchased in the sole name of the Deceased. The Belvedere property was sold for £380,000 on 7 December 2011.

7. Tragically, the Deceased was diagnosed with Motor Neurone Disease in 2015 but he remained in relatively good health for the next three years. His last will and testament is dated 25 March 2015. It appears to have been drafted by his brother-in-law, the Sixth Defendant. It is a surprising document in that I am satisfied that the marriage remained entirely happy but the only provision for the Claimant in the will was that she was left the contents of the property at Freshfield Bank, valued for probate purposes at £1,000. It seems highly likely that the Deceased viewed her as a joint owner of that property but that does not really explain the decision. The balance of the Estate was left to the four children on their respectively attaining the age of 25 in equal shares. There was a provision for the two sons to inherit some daggers but they were either sold before the Deceased's death or found to be fakes. The Executors were to be his sister, the Fifth Defendant, and her husband, the Sixth Defendant.

8. In 2018, the Claimant gave up work as a corporate trainer to care for the Deceased. In August 2018, the Deceased made a final trip to Australia to see his two sons. Again, it appears that he was still in fairly good health at that point. By December 2018, he had become wheelchair bound. As I have already said, he died on 26 April 2019. The Claimant and the Fourth Defendant continue to live in the property at Freshfield Bank. The Third Defendant also lives there when she is in this country.

9. As early as 18 May 2020, the Executors acknowledged that the property at Freshfield Bank was held on constructive trust as to 50% for the Claimant. This was as a result of an expressed common intention of the parties at the time of purchase along with the Claimant relying on that common intention and acting to her detriment by paying, amongst other things, half the mortgage.

10. The Grant of Probate is dated 14 November 2020. It showed the gross Estate as being £449,091, with a net figure of £429,963. On 13 February 2021, an open proposal was received from the First and Second Defendants, James and Sebastian, via their Aunt, Jodie Harrison, that the Estate should be split five ways between the four children and the Claimant. The proposal was silent as to the Claimant's interest in Freshfield Bank. Mr Reed, who appears on behalf of the Claimant, says that this offer shows that even the First and Second Defendants acknowledge that the will did not make reasonable financial provision for his client.

11. The Claimant's first witness statement is dated 27 April 2021. She notes that the Executors accept that the property is held on constructive trust but wonders if they were "*rowing back*" from that acknowledgment. In fact, I am satisfied that they have not. She notes that the property had a probate value of £500,000, but she told me in oral evidence that a recent Zoopla valuation was £685,000. It is a four bedroom detached house. She says that the marriage was entirely happy and she always paid half the mortgage. She said the mortgage had been £285,000, although it appears to have been slightly higher than that, but it had been redeemed by the Executors following the Deceased's death, from the proceeds of a life policy. I was taken in evidence to the policy. It was never assigned to the mortgage company but it says that the proceeds will be paid into the Deceased's Estate. The Claimant adds that there was a second family income policy with Aviva which was worth approximately £150,000. It has paid out £30,000 each April. The last payment will be received in April 2023. She had received £23,808 from the Deceased's pension but the money had been spent by her on expenses since his death. A second witness statement of the same date deals with difficulties her lawyers had encountered in serving the First and Second Defendants in Australia. I do not need to go into details but it does appear that both sons have had addiction issues and have been in trouble with the law. I do not believe it is necessary to set out these matters any further.

12. On 19 June 2021, the Executors filed their acknowledgment of service and said that they intended to remain neutral and not contest the claim. The Sixth Defendant has filed three statements, all of which have been confirmed in separate statements from the Fifth Defendant. His first statement is dated 10 June 2021. He says that, although the Executors have accepted the constructive trust claim, there remains an issue as to the treatment of the insurance policy. In essence, he argues that the Claimant owes the Estate half of the amount paid to discharge the mortgage on Freshfield Bank. He also says that he is the executor of the Estate of Elizabeth Barbara Paul, the Deceased's step-mother. The Deceased had been due to receive one-quarter of the residuary of her estate. After his death, Mrs Paul executed a codicil by which the Claimant inherited the Deceased's quarter share. At the time of this first statement, Mr Jayes thought that the Claimant would receive around £200,000 but he now says that it is going to be approximately £248,000 following the sale of a home in Hampstead. He has applied for probate but not yet received the grant. Although she has not filed an Acknowledgment of Service, it is clear that the Third Defendant does not contest the claim made by her mother.

13. The case was listed for directions on 1 July 2021 in front of Master Pester. Various directions were made to serve the First and Second Defendants. I am satisfied that these directions worked in the sense that both are aware of these proceedings, even though neither has acknowledged service formally. James has, of course, attended this hearing in person by video-link from a friend's address in Australia. Master Pester also transferred the claims to the Family Division.

14. A statement was filed on behalf of the First Defendant, James Paul by his aunt, Jodie Harrison. James did not sign it but it was signed by Jodie. It says that James is homeless due to Covid, having lost his job as a fitness trainer as a result of the pandemic. He says that the Claimant made an open offer to him and his brother of £20,000 each, which he viewed as insulting. He says that the Second Defendant, Sebastian is a diagnosed schizophrenic.

15. The Fourth Defendant, as a minor, required a litigation friend. Fortunately, the Claimant's sister, Emma Williams agreed to undertake the role. I am entirely satisfied this was appropriate in the circumstances of this case. Emma filed the certificate of suitability to act on 18 August 2021. She acknowledged service on the Fourth Defendant's behalf of 26 August 2021, indicating that she did not intend to contest the claim, although she has, helpfully, been represented by counsel at this hearing.

16. The Claimant filed a third witness statement on 8 December 2021. Fortunately, she has obtained a job as a school receptionist earning £17,793 per annum net. She makes the point that the Fourth Defendant is privately educated. Due to falling behind in her education, she is two years behind her chronological age and will not finish her schooling until she is aged 20 in 2025. On the basis of the current fees, the last four years of education will cost £47,760. The Claimant sets out the challenges facing her younger daughter, which I am satisfied relate in part to the tragic death of her father. It is very important that she remains at this private school which is doing an excellent job given these challenges. The Claimant tells me that the Deceased said that the Aviva family income policy would pay the school fees. The Claimant adds that, apart from the period when she was caring for the Deceased, she has always worked and contributed her half of the mortgage as well as to the other outgoings. It was a marriage of equals. Indeed, at one point she worked at a school attended by the children, leading to a reduction in their fees of 80%.

17. In his second statement, dated 23 February 2022, the Sixth Defendant says that, in addition to the residuary interest of the Claimant, the two girls get a bequest of £10,000 each. The boys do not benefit. Moreover, each child gets £27,936 from the Will Trust of the Deceased's father, Raymond Paul, who was also an international fencer. He died in 2013.

18. I heard the case on 1 March 2022. I directed that even though the First and Second Defendants had not filed acknowledgments of service, they could attend the final hearing remotely but would not be allowed to take part without permission. In fact, given that the First Defendant attended the final hearing without legal representation, I gave him permission to take part. I made various

other directions and listed a final hearing before myself on 13 June 2022 with a time estimate of one and a half days.

19. Emma Williams, the litigation friend of the Fourth Defendant filed a statement dated 23 May 2022. She said that the family did not believe that the Deceased meant to cut his wife out of his will. She adds that the Fourth Defendant was very close to her father. She confirms the evidence of the Claimant as to the Fourth Defendants' schooling. The fees were £22,680 for years 10 and 11, of which year 10 has now been paid. The Claimant has borrowed the money from the Fourth Defendants' inheritances. Years 12 and 13 are likely to be £25,080. In addition to the inheritances set out above, the Fourth Defendant is entitled to £4,400 from her paternal grandmother. Her total inheritances are therefore likely to be £42,336.

20. The Sixth Defendant filed a final statement on 23 May 2022. The Estate had received a further £20,762 from a Skandia Policy via the Deceased's father and step-mother. The Aviva policy had paid a further £30,000 on 21 April 2022 and will pay a final £30,000 on 21 April 2023. He deals with the reason that Freshfield Bank is in the Deceased's sole name. He basically confirms that it was only because of the fact that buy-to-let mortgages were required and that, had that not been the case, the property would have been bought in joint names, as the previous property was originally held. He indicated that he did not intend to attend the trial, which I agree was another sensible cost saving measure.

21. The final statement of the Claimant is dated 30 May 2022. She says that the Deceased told her that she would get 50% of the Estate and the children would get 50%. She has maintained the family home which would offset any occupational rent. Yasmin is travelling in South America. The Claimant holds £20,758 for the Fourth Defendant and owes her £11,678 re: this year's school fees. The Claimant needs a more modern car, costing approximately £20,000. She has borrowed £1,164 from her parents to do some running repairs to the roof of Freshfield Bank, although it requires further works to correct the problem. She has borrowed £62,000 from her parents for her costs. She has debts of £17,515. Her monthly expenditure is £2,656 but this includes school fees and school lunches. If those items are deducted, the total reduces to £1,431 per month as against a monthly income of £1,482 per month. I do, however, accept that this figure will only give her and the Fourth Defendant a very modest standard of living as the list excludes anything for holidays, entertainment or even clothes.

22. Finally, the Fifth and Sixth Defendants have provided up to date Estate Accounts. The probate value of Freshfield Bank was £500,000 of which only half or £250,000 is attributable to the Estate. The mortgage to the Birmingham Midshires was (£321,584), of which half was attributable to the Estate. Vitality Life had paid out £286,995. Aviva Life has paid out £120,066 including some interest with a further £30,000 to come. ReAssure paid £20,762, making a total of £427,823. The Accounts suggest that the Claimant owes £2,705 in relation to half the money in some bank/building society accounts and £1,500 as half the value of the family's Ford Focus car. The Estate has paid out £64 to the DWP; £2,030 for a loan with SMI; £3,011 for funeral expenses; and £321,584 to

redeem the mortgage, of which £160,792 may be owed by the Claimant to the Estate. The Accounts suggest that £1,287 is owed in relation to the Wake. There is also reference to the costs of repatriating the Deceased to the UK from Spain, but these sums were raised by Crowd Funding. Home insurance is due of £1,157.80 and the Executors have legal costs of £11,442. By my calculations, the actual liquid cash remaining, ignoring the money said to be owed by the Claimant, is £98,688, with a further sum of £30,000 due next April from Aviva.

23. It has to be said that, if I decide the costs should all be paid from the Estate, this will utilise virtually the entirety of the cash. The Claimant's costs are now £69,000. Some criticism of this figure was made by Mr James, who appears for the Fourth Defendant, but I do not consider it to be an unreasonable sum for the carriage of a fully contested High Court claim. The Fourth Defendant's costs are £18,600, also borrowed from the maternal grandparents. I have already noted that the Executors' legal costs are £11,442. If all are paid, the remaining cash is reduced to only £246.

The Constructive Trust claim

24. I can deal with the constructive trust claim very quickly. The law is agreed between counsel. It is set out in Lewin on Trusts 20th Edition at 10-063, namely:-

> "*When a claim is made by a person to displace the presumption that the beneficial ownership of property follows the legal ownership in a case where there is no express declaration of trust, the following questions must be addressed:*
>
> > *(1) Does the case fall within the domestic consumer context, such that the common intention doctrine applies?*
> > *(2) Is there evidence of an actual common intention, in the form of an agreement, arrangement or understanding between the parties that the beneficial ownership should not follow the legal ownership, either at the date when the property was first acquired or at some later date?*
> > *(3) In the absence of such a common intention, can an agreement, arrangement or understanding to this effect be inferred from the parties' conduct?*
> > *(4) Has the claimant relied to his detriment on the common intention relied upon?*
> > *(5) If there is an actual common intention, does it extend, either expressly or by inference, to the shares in which the property is to be beneficially owned?*
> > *(6) If the common intention does not extend to the shares in which the property is to be beneficially owned, what is a fair share having regard to the whole course of the parties' dealing in relation to the property, and to both financial contributions and other factors?"*

25. I remind myself that the Third to Sixth Defendants all accept that Freshfield Bank is held on a constructive trust for the Deceased and the Claimant in equal shares. The Second Defendant has not contested the claim. When I asked the

First Defendant, he did say that he considered the property was owned as per the legal title, namely solely by his father's Estate but he has no evidence to advance that supports that contention.

26. On the other hand, I have the evidence from both the Claimant and the Sixth Defendant. The Claimant reminds the court that their previous home, 5 Belvedere, was held in joint names until it needed to be placed in the Deceased's name to raise funds to purchase Freshfield Bank. She then says that they viewed Freshfield Bank together and jointly made the decision to purchase it as their matrimonial home. Again, it was placed in the Deceased's sole name solely to raise the mortgage "*although the equity would be owned equally by the pair of us".* The Claimant "*always contributed my half share of the mortgage".* The Sixth Defendant confirms that the previous two family homes were held jointly. The original intention was for Freshfield Bank also to be purchased jointly but was acquired in the Deceased's sole name just so a mortgage could be obtained. The Deceased told the Sixth Defendant that "*they intended to live in the property and treat it as their family home".*

27. I am entirely satisfied that the Deceased held the property on constructive trust for himself and the Claimant in equal shares. That was their actual common intention. Indeed, the property would have been in joint names were it not for the mortgage issue. The Claimant undoubtedly relied on this common intention to her detriment. After all, she paid her half of the mortgage instalments for many years.

28. An issue arose during the hearing as to whether the life assurance policy was also held on constructive trust. This had never been pleaded although there is one very short reference to it in the final statement of the Claimant. Until then, the Claimant and the Sixth Defendant had both taken the clear view that the policy fell into the Estate. It was never assigned to the mortgage. The Schedule for the policy itself could not be clearer. The benefits are payable to "*the Owner or the Owner's Estate".* I am therefore clear that, as a matter of law, the Claimant owes the Estate half the amount paid to redeem the mortgage, namely £160,792.

<u>The Inheritance Act claim</u>

29. Pursuant to section 1 of the Inheritance (Provision for Family and Dependants) Act 1975, the wife of the deceased may apply to the court for an order under section 2 of the Act on the ground that the disposition of the deceased's estate effected by his will is not such as to make reasonable financial provision for the applicant. The burden of proof is on the claimant to show that the will did not so provide. If the court is satisfied that reasonable financial provision was not made, the court may then vary the dispositions of the estate. Section 1(2)(a) defines reasonable financial provision for a spouse as "*such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance".* All other applicants can only claim for such provision as would be reasonable in all the circumstances of the case for their maintenance [s1(2)(b)].

30. The relevant principles applicable to claims under the 1975 Act were recently considered in *Illot v The Blue Cross [2017] UKSC 17; [2018] AC 545.* I remind myself that this was a claim by an adult child. Nevertheless, the court did provide much helpful guidance on how the court ought to approach a 1975 Act claim. The following general principles can be drawn [from paras.16-25]:

    (a) The test is not whether the deceased acted unreasonably. The correct test is an objective one: whether the deceased's dispositions, in not making greater financial provision for the applicant, have produced an unreasonable *result*. Thus, an unreasonable or indeed spiteful testator may have made reasonable financial provision for an applicant. Equally, a reasonable and caring testator may have failed to make reasonable financial provision.

    (b) For similar reasons, it is not the purpose of the 1975 Act to correct unfairness or provide rewards for good conduct. Testamentary freedom remains paramount outside the limited ambit of the statutory provisions.

    (c) It has become conventional to treat the consideration of the claim as a two-stage process, namely (1) has there been a failure to make reasonable financial provision, and if so, (2) what order ought to be made? However, in most cases, there is a large overlap between the two stages, to which the s.3 factors are applied equally. It is open to a judge to address both questions arising under the Act without repeating them. A broad-brush approach is required.

    (d) If the conclusion is that reasonable financial provision has not been made, needs are not necessarily the measure of the order to be made. Regard must be paid to each of the s.3 factors, such as beneficiaries' needs and the Estate's size and nature.

    (e) Provision is to be judged based on evidence at the date of the hearing, not death [see s.3(5) of the Act].

    (f) Whether best described as a value judgment or a discretion (and the former is preferable), each case turns on its own facts.

31. In determining whether reasonable financial provision was made and, if not, whether and in what manner to exercise its powers, the court must consider the following matters set out in section 3(1), namely:-

    (a) the resources and financial needs which the claimant has now and is likely to have in the foreseeable future;

    (b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;

(c) the resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;

(d) any obligations and responsibilities which the deceased had towards the claimant or towards any beneficiary of the estate of the deceased;

(e) the size and nature of the net estate of the deceased;

(f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased; and

(g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

32. Given that this is a claim by a spouse, I must also consider s3(2), namely the age of the applicant and the duration of the marriage; and the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family. Finally, I must have regard to the provision which the applicant might reasonably have expected to receive if, on the day on which the deceased died, the marriage, instead of being terminated by death, had been terminated by a decree of divorce.

33. I remind myself of the law as to financial remedies following divorce. My first consideration would be the welfare, whilst a minor, of the Fourth Defendant. Thereafter, the overall requirement in applying section 25 of the Matrimonial Causes Act 1973 is to achieve fairness. It was made clear in the seminal House of Lords decision of White v White [2000] UKHL 54; [2001] 1 AC 596 that there is to be no discrimination in financial remedy cases between a husband and wife. In the case of Miller/McFarlane [2006] UKHL 24; [2006] 2 AC 618, the House of Lords identified three principles that should guide the court in trying to achieve fairness, namely:-

    (a) The sharing of matrimonial property generated by the parties during their marriage;
    (b) Compensation for relationship generated disadvantage; and
    (c) Needs balanced against ability to pay.

34. I am absolutely clear that, in this case, the Claimant would have had an almost certain claim to an equal division of the assets had there been a divorce. The assets had accrued during what was undoubtedly a marriage to which each made equal contributions. She might have received more than half, if her needs, balanced against those of the deceased, justified it. A complicating factor would have been the inheritance from the step-mother. If the deceased had still been alive, he would have received that money and would claim that it was non-matrimonial property, only to be invaded in the case of need. As it is, the Claimant receives that money. It cannot of course be ignored but I am clear that it would not have reduced the entitlement to an equal division of the matrimonial assets.

35. In deciding how to deal with this claim, there are, of course, two additional factors that I cannot ignore. The first is that the parties were not about to be divorced. They remained happily married on the date the Deceased passed away. Second, as a result of his death, the Deceased undoubtedly would have had no needs to consider in a financial remedy case, other than his understandable and legitimate wish to benefit his four children, two of whom are not the children of the Claimant.

The evidence I heard

36. I will deal very briefly with the evidence. Although I heard oral evidence from the Claimant, the First Defendant and the Litigation Friend, it was all commendably brief.

37. The Claimant went first. She, very fairly, told me that Freshfield Bank had been valued by Zoopla at a guide price of £688,000. I am sure it has increased in value since the probate valuation of £500,000. Part of this may be as a result of the property being looked after by the Claimant, as well as by the strength of property prices, particularly in the South East of England, and the likelihood that the Probate valuation was somewhat conservative. If it fetched say £670,000, there would be costs of sale and a net equity of around £650,000. For the purposes of this judgment, I propose to work on that figure. The Claimant told me that she wished to continue to occupy the property until the Fourth Defendant completed her secondary education, which is an entirely appropriate wish. At that point, the Fourth Defendant wishes to go to University, possibly in the West Country. The Claimant told me she would sell Freshfield Bank and would probably purchase a property in the Welsh borders. She said she has another sister who lives in that area. I consider that I can take judicial notice of the fact that property prices in that area are considerably cheaper than in the South East of England. I have not seen property particulars, but I consider it is a reasonable assumption that she could purchase a nice home for one half of the equity in Freshfield Bank. If not, she will, of course, have money remaining from the Estate of Elizabeth Paul. She told me that the timbers in the property are rotten. The roof needs to be replaced. She obtained a quotation of £20,000 but has not yet had the work done. In answer to questions by the First Defendant, she said she did not know why she was benefiting from the Estate of Mrs Paul. Mrs Paul had simply replaced her husband as a beneficiary with her. I do remind myself that the First Defendant is not a beneficiary of this Estate, unlike the Third and Fourth Defendants, but I recognise that, had Mrs Paul not changed her will, he would have received 25% of this money if his father's will remained unaltered. In answer to questions by Mr James, for the Fourth Defendant, the Claimant said that the Fourth Defendant is struggling. She misses her dad and was devoted to him. She has changed as a child but is still committed to her education and she, thankfully, attends school every day.

38. I should briefly note that the Claimant's position, as advanced by Mr Reed, is that I should extinguish the debt she owes to the Estate in relation to the discharge of the mortgage; that I should defer the sale of Freshfield Bank for three years; that, on sale, the proceeds should be split as to 60% to her and 40% to the four children; that she should have her costs paid; and the final Aviva

payment should be used by her to discharge the Fourth Defendant's remaining school fees.

39. I then heard briefly from the First Defendant. He told me that he does not have a settled address. He was made redundant following the pandemic. He was previously a personal trainer. He does still retain a couple of clients for whom he works privately. If he was able to work full-time, he could earn around AU$20,000 per annum net. He told me he would not feel good about waiting three years for his inheritance as he is in "*dire need*", and has no other money to live on. Whilst I accept that, I remind myself that his father died prematurely at the age of 64. In normal circumstances, the First Defendant would not have expected to receive an inheritance from him for many years. In answer to questions by Mr Reed, the First Defendant told me that he accepted that the Claimant has to support his sisters but he reminded me that she will receive the money from Mrs Elizabeth Paul. He did not see why the will should be changed. The house should be sold before the Fourth Defendant completes her schooling. When asked about the Fourth Defendant's health difficulties, he referred to his brother's schizophrenia. He then said that he uses his aunt's property to shower and freshen up but otherwise sleeps in his car. He attended the hearing from a friend's house. He is now in touch with the Second Defendant. They are on good terms. He has got his mental health back and lives in St Kilda. I do accept that neither the First or Second Defendant are in a strong financial position but they are independent adults in their thirties. It may be that they have made unwise choices in the past but this is not a court of morals. I am clear that, if they receive a reasonable inheritance in three years' time, their father's wishes will have been respected and they cannot, in the circumstances, expect to receive it any earlier.

40. The final witness was the Litigation Friend. She confirmed her statement but was not cross-examined by either Mr Reed or the First Defendant. I am grateful to her for taking on this important role. She did not have to do so. I am entirely satisfied that she and her lawyers have represented the Fourth Defendant entirely properly with an appropriate balance between the legitimate expectations of their client and their client's mother.

My conclusions

41. I am clear that the Will did not make reasonable financial provision for the Claimant. I have had difficulty in understanding why the Deceased made no provision for her other than leaving her his share of the contents of the property. I accept the Claimant's evidence that he told her that she would receive half the Estate and the children would get the other half. I can only assume that he believed that half of Freshfield Bank was hers and that the life policy would pay off her half of the mortgage. If so, he was right as to the former but wrong as to the latter. Even if this was his belief, it is a shame he did not make it clear in the Will. Moreover, he did not make any provision for the Claimant and their children to remain in the property until the Fourth Defendant completed her secondary education and, even if he had allocated, in his mind, the Aviva policy to pay her school fees, his Will did not say that.

42. For all these reasons, I am absolutely clear that the Will did not make reasonable financial provision for the Claimant. Indeed, other than the First Defendant, all the parties agree that this is the case.

43. I must therefore decide what reasonable financial provision should now be made for her. I take the view that she has an irreducible right to half the Estate, given that this was a partnership marriage. The fact of the inheritance does not alter that position. If she had not been about to receive the inheritance, I would have been of the view that she would have been entitled to more than half the net Estate on the basis of her needs and her commitment to her daughters, particularly the Fourth Defendant. The fact, however, that she is about to receive nearly £250,000 from one of her husband's relatives cannot be ignored. It will be entirely up to her how she utilises that money. Some of it will have to be used to pay her debts. I am clear that some will be needed to subsidise the family expenditure over the next three years as, although I can provide for the school fees, her income only really pays for her basic expenses. She is entitled to new clothes, an allowance for entertainment and holidays, by way of example. A replacement car would be a sensible investment. She would, however, be well advised to save at least a good portion of the inheritance for her retirement. Her pension provision is very modest and she will need a capital cushion to assist her in retirement. I cannot, however, say that half the equity in Freshfield Bank, namely some £325,000 and the best part of £250,000 from the Estate of Mrs Paul, making a total of £575,000 is insufficient to provide for her reasonable needs going forward, even including those of the Fourth Defendant. She will, of course, be assisted in that regard by the last payment from Aviva, which should be used to pay for the Fourth Defendant's remaining school fees, on an undertaking from the Claimant to apply it for that purpose. For these reasons, I reject the Claimant's contention that I should divide the eventual proceeds of sale as to 60% to her and 40% to the children.

44. On the basis of an equal division, this will leave £325,000 in the Estate to be distributed to the four beneficiaries in three years' time. It is not unreasonable for them to wait until then, given the needs of the Fourth Defendant. They would then each receive just over £80,000, which is a considerable sum. For the three elder children, they would get the money immediately as all three would already be 25 by then, but the Fourth Defendant will have to wait a further five years. It will be entirely up to each of them how they utilise that money but I am satisfied it would be very useful to them all. For example, it should enable the First Defendant to establish his business. Moreover, such an outcome will pay respect to the wishes of the Deceased to benefit all four of his children equally and to do so to a considerable extent.

45. I therefore vary the provision made by the Deceased in his Will as follows:-

    (a) The Claimants' debt to the Estate for half of the mortgage repayment is extinguished. I further direct that she owes nothing in relation to the car or the joint bank accounts.

    (b) Freshfield Bank is not to be sold until the Fourth Defendant completes her secondary education, in the summer of 2025. At that point, the net equity, after deducting the reasonable costs of sale, will

be divided equally between the Claimant and the four residuary beneficiaries. The Claimant will be entitled to credit for any capital expenditure undertaken on the property in the interim, in excess of £10,000 to ensure she is reimbursed if she does repair the roof or does any further substantial works of improvement/repair, not covered by insurance.

(c) There will be no occupational rent payable by her, either to date or going forward, given the Claimant's obligations to the Fourth Defendant but the Claimant will be responsible for all outgoings on the property other than the capital expenditure referred to in (b) above.

(d) The final instalment on the Aviva policy will be paid to the Claimant on her undertaking to utilise it to discharge the school fees for the Fourth Defendant.

(e) The balance of the Estate will be utilised to discharge the following liabilities in this order, with any balance left over being paid to the Claimant:-

(i)	The Wake Venue	£1,287
(ii)	House insurance	£1,157
(iii)	The Executors' legal costs	£11,442
(iv)	The legal costs of the 4th Defendant	£18,600
(v)	The legal costs of the Claimant	£69,000
Total		£101,486

46. On this basis, there is likely to be a small shortfall. If so, it will have to come out of the legal costs of the Claimant, who does have the inheritance from Mrs Paul and the Aviva policy to fall back on. Having said that, it is all owed to the maternal grandparents, so whether the Fourth Defendant or the Claimant gets paid in full is rather academic.

47. I believe I have dealt with every issue but if there is anything I have omitted, I am sure the advocates will bring it to my attention. Finally, I am clear that nothing more could have been said or done on behalf of any of the parties. Whilst the First Defendant was not represented, I am clear that the result would have been exactly the same even if he had been able to instruct lawyers.

Mr Justice Moor

14 June 2022