

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
CHANCERY DIVISION

---

BETWEEN

'A' ON BEHALF OF 'AD' AND ON HER OWN BEHALF

**Intended Plaintiff;**

and

'C' EXECUTOR OF THE ESTATE OF  
'D' (DECEASED)

**Intended Defendant.**

---

**DEENY I**

[1] This is an application brought under the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979 by 'A' on behalf of herself and on behalf of her son, 'AD', against C the executor of the estate of 'D', the former partner, in modern parlance, of the plaintiff, and the father of 'AD'. The plaintiff and deceased were in a relationship in the early 1990s, but apparently almost simultaneously 'D' was in a relationship with 'E' who also bore him a child. Ultimately the plaintiff left 'D', leaving the home that they were sharing, on learning of this, and he, 'D', then lived there with 'E' although they do not seem to have married on the evidence before me.

[2] 'D' died on 27 October 2007 and a prompt letter was written on behalf of the plaintiff by her solicitors on 6 November 2007 saying that they had instructions from her as the mother of 'AD', the son of the deceased and in respect of whom maintenance was being paid , and saying that they understood there was a joint endowment policy in the name of 'D' and their client, but not saying anything further. No reply was received to that letter and no follow-up was sent to it. Administration of the estate was then taken out, apparently on 14 March 2008. By virtue of the provisions of the Inheritance Order proceedings should have been issued within 6 months of that date, on or about 14 September 2008, but such proceedings were not issued and the plaintiff now seeks an extension of time pursuant to Art. 6 of the Order. She did not apparently go back to her solicitors until December 2008 and again a letter was written at that time, but again was not pursued.

[3] It seems to me that in respect of 'A' there are points in favour of and there are points against granting her application for permission to proceed out of time. Mr Michael Lavery submits on her behalf, rightly, that the court has a wide discretion under Article 4 to grant an extension of time, but, like all judicial discretions it must be exercised with care and on proper grounds. This is a case where in her favour at least some letter was written timeously in November 2007, but it was a letter that did not assert any claim to her former partner's estate, save for the endowment policy, so it does not take her very far now. She may have contributed in various ways set out in her first affidavit to the home she shared for a couple of years with 'D', with whom she had been in a relationship from when she was a girl apparently, but this

was in the early '90s and her asserted help was modest. 'D' is dead and not in a position to comment on or answer her claims. It will be difficult for 'E' to do so though that would have been true even if the claim had been brought timeously. In the plaintiff's favour is the fact that neither the executor of the estate, who feels that he has done his job and administered the estate and he has nothing further to do in the matter, nor the beneficiary, who now is possessed of and living in the dwelling-house with her daughter, have chosen to oppose this application, but nor have they consented to it. They have left the matter to the court.

[4] Against the plaintiff in this regard is, as I have mentioned, that the letter did not assert a claim to his estate; the fact that they were not married which must be relevant to the nature of the claim that she might have under the Order; that the facts on which she will be relying happened some 16-18 years ago and the facts that she herself has since married, is in employment, is married to a man who is in employment, has no further children and is not in a position of need or dependence within the meaning of the Inheritance Order.

[5] I also have to take into account the extent of the delay. If she had issued proceedings in December 2008, and I am sure her solicitor would have done that if he had been instructed to do that, she would have only been a couple of months out of date, but in fact she did not issue until 10 July 2009. There is a degree of prejudice to the defendant and 'E' in proceeding now when the estate has been administered.

[6] Taking those factors together this does not seem to be an appropriate case to extend time on behalf of 'A'. I think it would be an unfortunate precedent for persons bringing these claims. I think persons who are personal representatives are

entitled to some finality. The only notice they got before they wound up the estate was about the endowment policy on foot of which the Plaintiff has in fact received £35,000 following the death of 'D'. That too is clearly a relevant factor. The other part of the letter of November 2007 related to the son, AD. Taking all those factors together, therefore, I refuse her application.

[7] The position of her son is entirely different. His father paid him maintenance up until a few weeks before his death for his support. He is still a minor, albeit approaching the age of majority. He may have a claim to a civil service pension which may or may not require the assistance of the court and it will have to be taken into account, but it is a further recognition that the deceased acknowledged him as a son. He cannot be blamed for any lack of activity on the part of his mother or anyone else. His claim was notified to the personal representative by the letter of November 2007. Finally, I observe that if his mother had also been in the field he and she would be in effect competing to some degree for any contribution from the beneficiary of the estate. I am not for a moment saying that I am deciding that case in his favour or what might be appropriate if he did succeed, clearly that is not something the court is doing, but I grant him the necessary permission pursuant to Art. 6. The case may proceed, therefore, by 'A' on behalf of 'AD', but not on her own behalf.