

The fascinating case of Alexander Wilson: A Contentious Probate perspective

Actress Ruth Wilson is currently appearing on our screens playing her own grandmother, Alison Wilson, telling the story of her life with her husband, Alexander Wilson, and discoveries made about his life after his death. The programme is based on Alison Wilson's memoirs and is a fascinating story of bigamy, secret lives and multiple families. They say that the truth is stranger than fiction and as contentious probate lawyers we often see the consequences of intrigues after death where complicated lives are revealed and loved ones left behind are forced to confront a very different reality to what they were expecting.

In "Mrs Wilson", Alison Wilson is shown as a grieving widow with two teenage sons busying herself with the organisation of her husband's funeral following his collapse and death. She is then visited by a lady claiming to be his wife, Gladys. Gladys provides evidence that they never divorced making Alexander's marriage to Alison illegal. As time moves on, another lady appears claiming to be his wife, Dorothy. Both Gladys and Dorothy also had children by Alexander.

In "Mrs Wilson", Alison starts making the arrangements for Alexander's funeral only for Gladys to indicate that as the "first" (and only legal) wife, she is the person entitled to deal with the body. When someone passes away without a Will, the person entitled to deal with the estate will be the surviving spouse if there was a lawful marriage in existence at the time of death. This is due to the operation of the Intestacy Rules that step in to dictate how an estate is to be dealt with if the deceased has died without a Will. So, for example, if someone was married but separated and had been in a relationship with someone else for many years prior to their death, it may not necessarily be their partner who is able to organise the funeral, decide on cremation or burial etc but the potentially long estranged spouse. That is unlikely to have been the deceased's wish.

The Intestacy Rules not only dictate who is entitled to deal with the estate in the absence of a Will but also who is entitled to benefit. The current rules provide that if someone passes away leaving a surviving spouse, the surviving spouse will receive the first £250,000 of their estate and all of their personal possessions. The surviving spouse will also receive an absolute interest in the remaining half of the estate. The remainder of the estate will be divided by the deceased's children. In the case of Alexander Wilson therefore, if he had died in 2018, Gladys would have received the first £250,000, his personal possessions and half of whatever was left. As the Intestacy Rules as at 2018 make no distinction between "legitimate" and "illegitimate" children, the remaining half of the estate would be divided between all of Alexander's children.

So Alison and Dorothy would not receive anything from his estate under the Intestacy Rules. They may have been left in financial difficulties as a result. For example, in "Mrs Wilson", Alison appears to be living in a house with Alexander and her two children. If that house was in the sole name of Alexander, it would have passed to Gladys under the Intestacy Rules meaning that Alison and her children would be made homeless.

As neither Alison nor Dorothy were legally married to Alexander, they would not be able to advance a claim under the Inheritance (Provision for Family & Dependents) Act 1975 as disinherited spouses. They would have to bring claims either as cohabitants or people financially dependent on Alexander. In order to be successful, they would need to prove that reasonable financial provision had not been made for them. If they surmounted that first hurdle, the Court would then consider what would constitute reasonable financial provision. The Court would look at all of the circumstances of the case including the size and make-up of the estate, the financial positions of the beneficiaries under the Intestacy Rules, the financial positions of the claimant etc. If an estate is large, it can be easier for a Court to award provision to a claimant than where an estate is small. If Alexander Wilson's only asset was the house that he lived in with Alison and his two sons by her, it may simply not be possible for Alison to receive that property because Gladys would then receive nothing. If Alexander Wilson owned multiple properties or had considerable wealth, it may be far easier for the Court to award Alison the "marital" home because there were still other assets that Gladys would receive.

Alexander's children may also have competing claims under the Inheritance (Provision for Family & Dependents) Act 1975. Under the 2018 Intestacy Rules, they would only receive a division of half of the remainder of the estate over £250,000. That may be insufficient financial provision. In "Mrs Wilson", some of the children appear to be in their twenties whilst one of Alison's sons appears to be either 17 or 18. Minor children generally have strong claims for reasonable financial provision because they are not able to support themselves. They rely on their parents. Alexander's minor child may have a claim to a larger inheritance than his siblings and what he receives under the Intestacy Rules.

We have written previously about how many alternative family structures we now see. There has been a rise in cohabiting relationships and second or third marriages/families. When someone passes away, it is perfectly possible that they could have a child who is, say, in their 30s and financially independent and a minor child from a later relationship. In the absence of a Will, both of those children would receive the same from the estate (if valued at over £250,000). Or, a deceased could have entered into a marriage shortly before death but died intestate leaving some minor children from a previous relationship. Marriage automatically revokes a Will (unless the Will was made in contemplation of marriage). Under the Intestacy Rules therefore, the surviving spouse would receive the entirety of the estate if worth not more than £250,000. The minor children would not receive anything. The minor children's redress would be pursuant to the Inheritance (Provision for Family & Dependents) Act 1975.

It is still the case that a large percentage of the adult population do not have a Will. Some people know what will happen to their estate on their death if they do not do a Will whilst some labour under some misapprehensions. For example, some people still believe in the existence of a common law marriage whereby their cohabitation will be treated the same as if they were married after a particular length of time. Individuals in whatever family structure are strongly advised to obtain legal advice about their position and how best to leave their testamentary affairs to ensure that their loved ones are protected and are not forced into battle to obtain inheritance. The family tree of Alexander Wilson is undoubtedly unusual but elements of Alison Wilson's story will resonate throughout the country.

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Our Private Client Team at Meridian Private Client can advise testators about the options available to them to structure their Wills whilst our Contentious Trusts and Probate Team are experienced at acting for disappointed beneficiaries in claims pursuant to the Inheritance (Provision for Family & Dependants) Act 1975. Our contact details are set out below:

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This article was produced on 10 December 2018. It should not be relied upon as legal advice as individual circumstances will differ.

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