

Cohabitants- Do you qualify?

A landmark High Court decision DC VDR has provided welcome clarification in relation to the rights of a cohabitant in applying for financial provision from the estate of their deceased cohabitant. The right to apply is enshrined in Section 194(1) of the Civil Partnership and Certain rights and Obligations of Cohabitants Act 2010.

This case came before the High Court in May 2015 and was decided by Judge Marie Baker.

The Court set out the following useful parameters;

1. The claimant had to prove that he had lived together with his cohabitant in an “intimate and committed relationship” pursuant Section 172(1). The Court took into account the criteria set out in Section 172(2) which sets out factors such as the duration of the relationship, the degree of financial independence, any financial arrangements between them, if one of the adults cared and supported the children of the other and the degree to which the cohabitants operated as a couple.
2. In determining the “basis” upon which a couple lived together she said that this involved a number of “interconnected elements such as the degree of shared activities such as meals, sharing of household chores, holidays etc.”

Interestingly Judge Baker held that though the couple were not financially dependent for the basics of life the claimant clearly had a degree of financial dependence on his deceased cohabitant

3. The Judge went on to say that “any property acquired by the deceased cohabitant before their relationship commenced and independently of any direct or indirect contribution of the claimant had to be treated differently to property acquired in the course of the relationship”. She made clear however that this did not mean that such inherited property acquired prior to the relationship commencing was automatically excluded from the “pot” but it meant that it was not immediately included and it depended on the facts of the case.
4. The Judge took into account what the Claimant might have obtained if they had been married or in a civil partnership and had died without making a will i.e. the maximum the Claimant could get was 50%.

5. The Court also took into account the extent to which any claim or any amount to which the Claimant would receive would displace the interest of any other beneficiary.

In making the decision the Judge took into account that the claimant did not have sufficient financial resources for his own needs and that there were no other persons in respect to whom the deceased had any obligations to provide financially i.e. children.

The Claimant did have a small farm which did not have any residential accommodation. The Court felt it was unreasonable to direct that the farm be sold.

The Court directed that the surviving cohabitant be granted provision of approximately 45% of the deceased cohabitant's share. The Court determined that "the percentage arose more from the value of the separate assets and that it was possible to make proper provision by a distribution of property". She went on to say that she did not regard that the legislation mandated or permitted a rule or even a rule of thumb that directed a particular percentage split i.e. she felt that she had discretion to decide what was fair in the circumstances of the case.

This case demonstrates the degree to which a Claimant must prove that there was an intimate and committed relationship, that the parties enjoyed activities together, that they presented as a couple and that there was some financial dependency and interdependence between them.

This decision is likely to provide some clarity to cohabitants in similar circumstances in deciding whether to bring claims before the Court.

For further information in relation to any Family Law matter please contact Brendan Dillon or Lorna Mc Ardle on 2960666 or info@dillon.ie