

## **EWHC allow son to remain as trust beneficiary despite paternity dispute**

Synopsis: The meaning of the term 'children' in a trust deed. The England and Wales High court have rejected a claimant's attempt to have his brother removed as beneficiary of a family trust after a dispute over paternity.

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In a recent case ([Marcus v Marcus, 2024 EWHC 2086 Ch](#)), the England and Wales High Court (EWHC) have rejected a claimant's attempt to have his brother removed as beneficiary of a family trust settled by his deceased father after a dispute over paternity.

In November 2003, the trust in question was created as a so called 'Son of Melville' arrangement to postpone the payment of a capital gains tax liability. Discretionary beneficiaries of this trust included 'the children and remoter issue' of the settlor (the deceased) along with their spouses. At the time, the deceased's wife also created a similar settlement.

When this arrangement was created, Jonathan Marcus (the claimant) and Edward Marcus (the defendant) were being brought up and under the belief that biologically, they were brothers. However, in 2010, their mother had told the defendant that the deceased was not in fact his biological father. The deceased never discovered this and passed in 2020. It was only in May 2023, long after his father's death that the claimant discovered this. By that time, the claimant and defendant had already fallen out, with the defendant having launched legal action to have the claimant removed as a trustee of the settlement. In 2022, a court ordered both brothers to resign in favour of independent trustees, although that court order doesn't appear to have been carried out.

After discovering that the defendant was not his biological brother, the claimant then issued his claim to have the defendant removed as a beneficiary of the trust settled by the deceased. This claim was put forward on the grounds that the defendant was not the deceased's biological son and that the word 'children' in the settlement did not include him as a stepchild. In response to that, the defendant argued that the settlement refers to both brothers and that 'children' includes children and stepchildren of the family.

The EWHC concluded that the defendant was probably not the deceased's biological son. However, on the issue of the proper construction of the settlement, and the natural meaning of the reference to 'the children' used in the trust deed, the court ruled that this was intended to include both the defendant, and the claimant.

The court said, *"the surrounding circumstances point overwhelmingly in favour of a wider meaning than biological child being adopted. A reasonable person in knowledge of the relevant facts would readily conclude that when using "children"*

*Stuart intended this word to be understood as meaning Edward and Jonathan; and not "Edward and Jonathan provided they are in fact my biological sons".*

Besides this, there was no reason to consider that the deceased may have intended to treat the defendant and claimant unequally. The EWHC stated that "The inequality that would arise between the two settlements by applying the natural meaning of children is stark".

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