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## **AM v SS (WS intervening)**

**[2014] EWHC 2887** (Fam)

### **Family Division**

**Coleridge J**

**19 March 2014**

*Family provision – Property available for financial provision – Preliminary issue arising as to husband and wife's respective interests in three properties – Whether two properties **being** gifts from husband's father – Whether husband having legal and beneficial interest in third property or whether beneficially owned by husband's sister.*

### **Abstract**

*Family provision – Property available for financial provision. The proceedings concerned preliminary questions which related to the husband and wife's respective interests in three properties. The Family Division, having considered the evidence and authority on resulting and constructive trusts, made findings as to each of the three properties.*

### **Digest**

The judgment **is** available at: [\[2014\] EWHC 2887 \(Fam\)](#)

The proceedings concerned the determination of preliminary questions concerning the husband and wife's respective interests in three properties. Two of the properties **were** in England and one **was** in Cairo. The first of the English properties had an agreed value of £5.36m. The second English property **was** valued at £1.25m, and **was** the present home of the husband's sister, the intervenor. It **was** agreed that that property had **been** bought in the husband's name and one of the reasons for that had **been** that the intervenor and her father had not, at the time, **been** on very good terms. It **was** also agreed that the property had **been** found by the intervenor and her husband, that the particulars for the property had **been** sent by the intervenor to her brother (the husband in the present case) and that all the money for the purchase price had emanated from the husband's father. The property in Cairo had an agreed value of approximately £3m.

It fell to **be** determined, first, in respect of the first of the English properties and the Cairo property, whether, as the wife contended, she and the husband had **been** given them as part of a generous wedding gift by the husband's father or whether, as the husband contended, they had at all times **been** the husband's father's property. Secondly, as regards the second of the English properties, whether, as the wife contended, the property **was** in the husband's sole name and he had, accordingly, both the legal and, ultimately, the beneficial interest in that property, subject, perhaps, to the intervenor's right to occupy it while her children **were** growing up or whether, as the husband contended, it **was** beneficially owned by the intervenor and had always **been** her property beneficially. In that regard, the court considered

whether the husband had **been** holding the property for his sister qua beneficiary or merely as a trustee for her use in some more vague sense whilst a roof had **been** required over the head of the children.

The court ruled:

(1) There **was** no cogent evidence to displace the primary evidence that the first of the English properties **was** and always had **been** the father's property. The wife's evidence had changed from time to time and she had not **been** wholly clear as to when the gift **was** said to have taken place. She **was** very short on any kind of detail which, it seemed, **was** vital to enable her to establish that that extremely valuable property had **been** given to her and the husband. In respect of the Cairo property, the wife's evidence on that aspect of the case **was** thin and inconsistent, and again nowhere near sufficient to displace the basic legal position, which had **been**, and **was** accepted to have **been**, that the property had belonged in every sense to the husband's father. Accordingly, the Cairo property **was** and remained the property of the husband's father (see [9], [12] of the judgment).

(2) As to the second of the English properties, given the evidence about the derivation of the purchase price and the express understanding as to why the property had **been** placed into the husband's name, it would **be** wholly unconscionable to allow the husband to assert that it had **been** his property beneficially and he had not for one moment done so. All the surrounding evidence pointed in one direction. Accordingly, the husband held the beneficial interest in the second of the English properties for his sister, the intervenor, and she could, if she chose to do so, call for it to **be** transferred to her (see [27], [29] of the judgment).

*De Bruyne v De Bruyne* [\[2010\] All ER \(D\) 120 \(May\)](#) applied.

Simon Calhaem for the applicant.

Simon Webster for the respondent.

Michael Bradley for the intervenor.

Emma Price Barrister.