



Neutral Citation Number: [2021] EWHC 3099 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 November 2021

Before :

MR JUSTICE POOLE

Re P (Presumption of Death)

Applicant

D in person as Litigation Friend for **the Applicant**

Hearing date: 12 November 2021

JUDGMENT

Mr Justice Poole :

1. On 12 November 2021 I heard from D who acts as Litigation Friend for her son, C, in a claim for a declaration under the Presumption of Death Act 2013 that her son's father, P, is presumed to be dead. This judgment sets out the reasons why I have made the declaration sought.
2. D and P were partners who co-habited and had a child, C, together but they never married or entered into a civil partnership. P was born on 9 March 1972 in Surrey but spent his childhood in Kent. On leaving school he had a series of jobs and then worked for a major airline as cabin crew for ten years, leaving in 2006. He then worked on a self-employed basis doing odd jobs but later became involved in helping to set up a restaurant in Barcelona. D and P met through a mutual friend in 2008 and started living together. In 2009, when D became pregnant with their child, P spent most of his time with her in England but would still sometimes travel to continue work on the restaurant project in Barcelona. D gave birth to their son in March 2010. P was a devoted father. His own parents were both alive and he would visit them. He had a brother. He was also close to his maternal aunt, who, like his mother, lives in Spain. He had a network of friends.
3. P decided to return to work as cabin crew but before doing so he wanted to travel. In April 2011 he flew to South America with his friend G to enjoy a holiday. They travelled to Peru, Columbia and Ecuador. P kept in regular contact with D until, when he was in Lima, Peru, his communications abruptly ceased. His last known communication was a text to D on 16 May 2011. G's communications with his loved ones also ceased. Neither man has been seen or heard of by family or friends since then. Notwithstanding many enquiries and attempts to trace him, there is no information at all as to what happened to P on or after 16 May 2011.
4. I have been provided with statements from D, P's mother, his aunt, and his friend, F. D and others have sought assistance from the police, the Foreign, Commonwealth and Development Office, and the Peruvian authorities. Posters have been displayed in Lima, social media pleas have been issued, and disclosure orders made against bodies including the NHS, the DWP, and the Salvation Army: all to no avail. There has been no activity on P's bank or mobile phone accounts. D has provided evidence that G also remains missing.
5. In accordance with court directions, D placed an advertisement in the Berkhamsted and Tring Gazette concerning this application. The advertisement was compliant with the provisions of rule 57.21 and Practice Direction 57B of the Civil Procedure Rules 1998. There has been no response.
6. Very sadly P's father died shortly after he went missing. More recently, P's grandmother died leaving him a small bequest, prompting this application so that, upon presumption of death being declared, P's son could benefit.
7. The awful disappearance of P over ten years ago now falls to be considered by reference to the Presumption of Death Act 2013. Section 1 of the Act provides,

Applying for declaration

- (1) This section applies where a person who is missing—
 - (a) is thought to have died, or
 - (b) has not been known to be alive for a period of at least 7 years.
- (2) Any person may apply to the High Court for a declaration that the missing person is presumed to be dead.
- (3) The court has jurisdiction to hear and determine an application under this section only if—
 - (a) the missing person was domiciled in England and Wales on the day on which he or she was last known to be alive,
 - (b) the missing person had been habitually resident in England and Wales throughout the period of 1 year ending with that day, or
 - (c) subsection (4) is satisfied.
- (4) This subsection is satisfied if the application is made by the spouse or civil partner of the missing person and—
 - (a) the applicant is domiciled in England and Wales on the day on which the application is made, or
 - (b) the applicant has been habitually resident in England and Wales throughout the period of 1 year ending with that day.
- (5) The court must refuse to hear an application under this section if—
 - (a) the application is made by someone other than the missing person's spouse, civil partner, parent, child or sibling, and
 - (b) the court considers that the applicant does not have a sufficient interest in the determination of the application.

P's mother asked D to make this application because she has recently suffered bereavement. D noted s.1(5) of the Act and was anxious to avoid refusal of the application on the grounds that she did not have sufficient interest in the determination of the application. Hence, she brought the claim in her son's name, acting as his litigation friend. Under the Fatal Accidents Act 1976 a person who has co-habited with the deceased for at least two years is eligible to make a dependency claim. Under the 2013 Act a long-term cohabitee is not automatically deemed to have sufficient interest to bring a claim nor is "sufficient interest" defined. A long-term cohabitee might be as close as anyone to the subject person and it seems unfortunate that D had to use her son as the claimant in order to ensure that the application would be determined.

8. The evidence establishes that P was domiciled in England and Wales on the day he was last known to be alive, and that he had been habitually resident in this jurisdiction for over a year before that date.

9. Under section 2 of the 1983 Act,

Making declaration

(1) On an application under section 1, the court must make the declaration if it is satisfied that the missing person—

(a) has died, or

(b) has not been known to be alive for a period of at least 7 years.

(2) It must include in the declaration a finding as to the date and time of the missing person's death.

(3) Where the court—

(a) is satisfied that the missing person has died, but

(b) is uncertain at which moment during a period the missing person died, the finding must be that the missing person is presumed to have died at the end of that period.

(4) Where the court—

(a) is satisfied that the missing person has not been known to be alive for a period of at least 7 years, but

(b) is not satisfied that the missing person has died, the finding must be that the missing person is presumed to have died at the end of the period of 7 years beginning with the day after the day on which he or she was last known to be alive.

10. By section 9,

Giving notice of application

(1) A person who makes an application under this Act for a declaration or a variation order must send to the persons specified by rules of court—

(a) notice of the application, and

(b) any other information specified by rules of court.

(2) An application under this Act for a declaration or a variation order must be advertised in accordance with rules of court.

(3) The court must refuse to hear an application under this Act for a declaration or a variation order if the requirements in this section have not been met.

Civil Procedure Rules 57.20-21 and Practice Direction 57B apply. The Practice Direction includes a long list of information that must be included in the claim form.

11. D has meticulously complied with the requirements regarding information, notice, and advertisement. The application contains the required information. D has served the application and accompanying documents on P's surviving relatives: his mother and brother, as required by s.9(1) of the Act and CPR 57.20(1). As noted, she has complied with the advertisement requirement. I am satisfied that the requirements in s.9 are met and there is no requirement under s.9(3) of the Act that I must refuse to hear the application.
12. I have considered whether this case falls under s.2(3) or s.2(4) of the Act. It is arguable that the evidence proves that P has died given that there was a sudden cessation of communication which has now persisted for over ten years in the context of a man who had a partner and young child, and family, to whom he was close. However, the court has no evidence of the surrounding circumstances in Lima at the time communications ceased. A finding that a person has died should only be made on clear evidence of their death. In my judgment, the facts of the case sit more easily within s.2(4) than s.2(3). I am not satisfied that the evidence establishes that P has died, but I am satisfied that he is missing and has not been known to be alive for over seven years. Pursuant to s.2(4) of the Presumption of Death Act 2013, I find that P is presumed to have died at the end of the period of 7 years beginning with the day after the day on which he or she was last known to be alive. The last day on which he was known to be alive was 16 May 2011, and therefore he is presumed to have died at the end of the period of 7 years beginning on 17 May 2011, namely at midnight on 16 May 2018.
13. I shall make an order declaring the presumption of P's death at midnight on 16 May 2018 and which shall contain the information required by Schedule 1(2) of the Act. The order shall be sent to the Registrar General so that an entry will be made in the Register of Presumed Deaths and the Registrar General will secure that that entry will be included in the index of the registers of deaths. I shall also draw the Registrar General's attention to the matter addressed at paragraph 7 of this judgment.
14. I have provided a non-anonymised written judgment so that it can be made available to D, to C, and to members of P's family, to all of whom I extend my condolences.