Neutral Citation Number: [2014] EWHC 3055 (Ch)

Case No: 3 PR 92335

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

MANCHESTER DISTRICT REGISTRY

Civil Justice Centre

Manchester M 60 9DJ

Date: 24/09/2014

Before :

HIS HONOUR JUDGE PELLING QC

SITTING AS A JUDGE OF THE HIGH COURT

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Between :

PAUL CHADWICK	**Claimant**
- and -	
(1) ANTHONY RICKARDS COLLINSON **(2) PETER JAN BUJAKOWSKI** **(sued as the executors of Lisa Jane Clay Deceased)** **(3) GRETA SQUIRES** **(representing herself and all those interested on the intestacy of Lisa Jane Clay Deceased)**	**Defendants**

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Mr Michael Whyatt (instructed by **Clarkson Hirst**) for the **Claimant**

Mr N Gowling (instructed by **JWK Solicitors**) for the **First and Second Defendants**

Mr David Gilchrist (instructed by **Slater & Gordon**) for the **Third Defendant**

Hearing dates: 22 September 2014

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Approved Judgment

HH Judge Pelling QC: Introduction

1. The Claimant and Lisa Jane Clay Deceased ("the Deceased") lived together from about 2003. The relationship between the Claimant and the Deceased was an apparently stable and loving one. They had one child, a son called Joseph Michael ("Joseph") who was aged 6 in April 2013. By then the family lived together at 36 Lowlands Road, Bolton-le-Sands, Lancashire ("the property"). The Property was owned by the Claimant and the Deceased as joint tenants.

2. On 8 April 2013, the Claimant had been referred for a mental health assessment after attending his GP describing feelings of paranoia and of hearing voices. He was due to attend an appointment for that assessment on 9 April 2013. In the early morning of 9 April 2013, the Claimant unlawfully killed the Deceased and Joseph by stabbing them each repeatedly. The Claimant was arrested and charged with murder. On 20 September 2013, the Claimant pleaded guilty to manslaughter on grounds of diminished responsibility. That plea was accepted by the Crown and the Claimant was made the subject of a Hospital Order under Section 37 of the Mental Health Act 1983 with restrictions being imposed under Section 41. Since that date the Claimant has been detained in a medium secure facility pursuant to those Orders.

3. On 18 August 2008, the Deceased had made a will under which the Claimant was the residuary beneficiary. Aside from the Deceased's interest in the Property, she left various other assets including the proceeds of an employee's death benefit insurance policy and a lump sum payable under a pension scheme. The net value of the estate is£79,098.87 of which £60,000 is contributed by the interest of the Deceased in the Property.

4. The Deceased's interest in the Property would normally have passed to the Claimant on the death of the Deceased because the joint tenancy had not been severed prior to her death. However, it is a rule of the common law that (subject to the Court's power to modify the application of the Rule in

individual cases by operation of the Forfeiture Act 1982) a person who has unlawfully killed another is precluded from acquiring a benefit as a result of the killing ("the Forfeiture Rule").

5. If the Forfeiture Rule applies, and the person unlawfully killed is a joint tenant of real property with the person responsible for that persons death, the effect of the Forfeiture Rule in relation to property held in this way is to sever the joint tenancy. Thus, in this case, if the Forfeiture Rule applies, in law the Deceased is treated as being entitled at the date of her death to an equal half share in the Property as a tenant in common with the Claimant – see Dunbar v. Plant [1998] Ch 412 per Mummery LJ at 418A-B. The result is that the Claimant is entitled to retain his half share but is not entitled to the Deceased's half share which is treated as forming part of her estate. Further, if the Forfeiture Rule applies, then the Claimant is precluded from inheriting under the Deceased's will. In the result, if the Forfeiture Rule applies, there will be an intestacy and the estate will be distributed in accordance with the Intestacy Rules.

6. On 16 December 2013 the Claimant commenced these proceedings by which he seeks orders declaring that the Forfeiture Rule does not apply in the circumstances ofthis case or alternatively that the Forfeiture Rule should be disapplied pursuant to Section 2(2) of the Forfeiture Act 1982. This is the trial of those proceedings.

7. The trial took place on 22 September 2014. Although the executors of Lisa Jane Clay Deceased ("the Deceased") appeared by Counsel at the trial, they were neutral as to the outcome and thus did not play any active part in the proceedings. I heard oral evidence from the Claimant, his mother and father and from the Third Defendant. A statement filed on behalf of the Claimant from Ms Jane Gill (the Claimant's sister) was admitted under the Civil Evidence Act. A number of statements were filed on behalf of the Third Defendant under the Civil Evidence Act including statements from Mr John de Carpentier FRCS, a consultant ENT Surgeon who treated the Claimant on 9th April 2014, Ms Marlene Fullwood, the wife of the Deceased's cousin, Ms Janice Taylor, a cousin of the Deceased, Ms Marion Clay, an aunt of the Deceased, and Ms Betty Collins, an aunt of the Deceased. I have read each

of these Civil Evidence Act statements. Finally, medical evidence was adduced in the form of a report by Dr Stephen Barlow MB., Ch.B., FRCPsych., a consultant forensic psychiatrist. Dr Barlow was originally instructed by the Crown Prosecution Service in relation to proceedings brought against the Claimant arising from the death of the Deceased to which I refer in more detail below. His initial report for the CPS is dated 2 September 2013.That report has been supplemented for these proceedings by a supplemental report dated 27 August 2014 and by a further report containing responses to questions raised on behalf of the Claimant and the Third Defendant dated 4 September 2014.

The Legal Principles

8. The Forfeiture Rule is as I have said a common law rule which for public policy reasons precludes a person who has unlawfully killed another from acquiring a benefit as a result of the killing – see In the Estate of Crippen Deceased [1911] P 108 per Sir Samuel Evans P at 112 (in relation to murder), In the Estate of Hall Deceased [1914] P 1 (in relation to manslaughter) and Dunbar v. Plant (ante) (in relation to suicide pacts).

9. There has been some degree of doubt as to whether the Forfeiture Rule applies to all cases of manslaughter. This debate was stimulated because, as Lord Denning observed in Gray v. Barr [1971] 2 QB 554 at 568, “ manslaughter is a crime that varies infinitely in its seriousness. It may come very near to murder or amount to little more than inadvertence.” . In my judgment however, the law on this issue was settled by Philips LJ (as he then was) in Dunbar v. Plant (ante) when he held that:

“So far as the [Forfeiture] rule is concerned, it is hard to see any logical basis for not applying it in all cases of manslaughter. … in the crime of manslaughter the actus reus is causing the death of another. That actus reus is rendered criminal if it occurs in one of the various circumstances that are prescribed by law. Anyone guilty of manslaughter has ex hypothesi, caused the death of another by criminal conduct. It is in such circumstances that the rule … applies.”

In Re H Deceased [1990] 1 FLR 441, the Plaintiff had stabbed his wife to death while acting under a delusion induced by a reaction to a drug that he had been prescribed. The trial Judge had concluded that the Forfeiture Rule did not apply because it could not be said that the Plaintiff had acted deliberately or intentionally. In Dunbar v. Plant (ante) Philips LJ concluded that this approach was erroneous, because it could not be reconciled with the Plaintiff's guilty plea. As Philips LJ put it, "… the judge ought, on the facts of this case, to have held that the rule applied, but that in the circumstances the Plaintiff should be relieved of its effect under the Forfeiture Act 1982." Hirst LJ agreed with Philips LJ. Thus the law on this issue is as stated by Philips LJ. This approach was followed by Patten J (as he then was) in Dalton v. Latham [2003] EWHC 796 (Ch.) [2003] WTLR 687 and HH Judge Norris QC (as he then was) sitting as a Judge of the Chancery Division in Re Land Deceased [2007] 1 WLR 1009 (a case of manslaughter by gross negligence).

10. By Section 2(2) of Forfeiture Act 1982 , where the Forfeiture Rule has been determined to apply, the court may modify the effect of the Rule but:

"The court shall not make an order under this section modifying the effect of the forfeiture rule in any case unless it is satisfied that, having regard to the conduct of the offender and of the Deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified in that case."

The effect of this provision was analysed by both Philips LJ and Mummery LJ in Dunbar v. Plant (ante). Philips LJ held that the " … first and paramount consideration must be whether the culpability attending the beneficiary's criminal conduct was such as to justify the application of the forfeiture rule at all. Philips LJ also noted in that case that a relevant consideration was that " … the assets with which this case is concerned were in no way derived from [the Deceased's] family …" . Mummery LJ considered the Act to require the Court to:

"… look at the case in the round, pay regard to all the material circumstances, including the conduct of the offender and the deceased, and then ask whether "the justice of the case requires" a modification of the

effect of the forfeiture rule. … The court is entitled to take into account a whole range of circumstances relevant to the discretion, quite apart from the conduct of the offender and the deceased: the relationship between them; the degree of moral culpability for what happened; the nature and gravity of the offence; the intentions of the deceased; the size of the estate and the value of the property in dispute; the financial position of the offender and the moral claims and wishes of those who would be entitled to take the property on the application of the forfeiture rule. ”

The effect of these different approaches was held by Patten J in Dalton v. Latham (ante) at [11] as meaning that the first and paramount consideration is that identified by Philips LJ but that such is not the only factor to be considered and that the other factors to be considered included those identified by Mummery LJ. I would be entitled to depart from that approach only if satisfied that it was plainly wrong. That isnot my view. On the contrary, with respect, I consider it to be the correct approach not least because it is consistent with the terms of the Act.

The Facts

11. Mr Gilchrist sought to explore in cross examination of the Claimant the ferocity and duration of the attacks on the Deceased and Joseph. The material by which this cross examination was carried out was principally the records of the interviews of the Claimant by the police officers investigating the killing of Joseph and the Deceased and by reference to the findings made by Scene of Crime Investigators at the Property following the arrest of the Deceased. This material is graphic and in the highest degree distressing in particular for the relatives of the Deceased. However, it is necessary that I summarise at least some of this material given that Mr Gilchrist sought to rely on the ferocity and duration of the attacks, and the clarity of the Claimant’s recollection of what had happened, as material to the assessment of the Claimant’s moral culpability.

12. The post-mortem examination of Joseph revealed that he had suffered a large number of stab wounds as a result of the assault upon him by the Claimant, including 6 to the chest. It was these wounds that proved fatal.

The wounds were described by the pathologist as requiring considerable force to inflict. The pathologist added that:

“In addition to the fatal stab wounds there were also numerous puncture wounds to the body. These in m y opinion were caused by a deliberate prodding type motion and would be in keeping with infliction by the very tip of a balded implement/knife. They would not have caused or contributed to death to any great extent but were all inflicted in life and would have caused pain and suffering.”

Incised wounds were identified to Joseph’s neck and back which had also been inflicted in life and would have caused pain and suffering but not death. A post mortem examination was also carried out in the Deceased. She too died as a result of multiple stab wounds. In addition there were “defence” type injuries to both upper limbs and a number of other pre-mortem puncture wounds.

13. The Claimant gave a relatively full description of what had happened when being interviewed by police, although it is fair to say that the relevant interview took place a week after the death of the Deceased and Joseph. This level of recollection was relied on by Mr Gilchrist as demonstrating that the Claimant was at least partially culpable for what happened. Although the whole of the relevant interviews have to be read in order to understand the substance of this point, the following extracts are illustrative. The relevant interview took place on 18 April 2013 in the presence of the Claimant’s then solicitor. The Claimant was able to tell the officer conducting the interview (DC Mashiter) in the course of an interview that:

i) He awoke in the early hours of the morning, went to the kitchen and picked up two knives which he then took back to the bedroom and put the knives under the bed and went back to bed for 10-15 minutes (Transcript, page 13 of 28);

ii) About 10 minutes later, the Claimant attempted to suffocate the Deceased “… but to no avail it just woke her up so therefore I got one , one of the knives which was a bread knife and stabbed her in the chest once then she sort of said “what are you doing” so I then stabbed her a second time and

then after a few seconds after that probably about another half a dozen times … ” (Transcript, page 14 of 28);

iii) This did not kill the Deceased because according to the Claimant she then “ ran downstairs” and Joseph woke up came into the room shared by the Claimant and the Deceased; then or shortly thereafter he says that he stabbed Joseph and then he says “ … then I went down stairs and Lisa was sort of frantic wondering what was going on, understandably, and then I stabbed her probably about another three times … I went back upstairs and Joseph was still slightly breathing and I stabbed him a few more times and after than went back downstairs after realising that Joseph was dead and Lisa was still breathing slightly I went back down stairs and stabbed her probably about another couple of times until I realised both of them had died. At the same time I started to stab myself downstairs” (Transcript page 15 of 28);

iv) Then:

“ … After that I sort of sat there wondering why all this had happened, I mean both Lisa and Joseph were both dead.

…

And I sat there wondering why all this has happened and then I tried to sort of go to the top of the stairs where I found Joseph dead, I picked him up and put him in my arms and put him into his bed where he was left there and I then went downstairs realised for the second time Lisa had died there was not breathing and I went back upstairs I think for the second time and just sat there and then I think I did another incision on meself which started to pour more blood which I felt pretty drowsy then and after that erm just hoping you know that I was , I started feeling weary and I erm sort of stood at the top of the landing erm hoping meself would die with the blood pouring from meself, just sat there wondering why Id done it, I then eventually fell down the stairs with being sort of dizzy and disoriented and erm found meself at the bottom of the stairs where Lisa was laying in the hallway. I then couldn’t really, I cannot remember a lot from there.”

(Transcript, pages 16 and 17 of 28)

14. Mrs Susan Chadwick, the Claimant's mother gave evidence as to how what had happened came to light. The Claimant, Deceased and Joseph were meant to meet Mrs Chadwick at her daughter Jane's home at 10.30. When they did not arrive, she calledthe house on the house phone and the Deceased's mobile phone. She then went to the Property. She looked through the letterbox, saw the Deceased and then either saw or heard the Claimant fall down the stairs. By then it was about 11 a.m. Since the Claimant had unlawfully killed to Deceased and Joseph in the early part of the morning, it follows that some hours elapsed between those deaths and the arrival at the Property of first Mrs Chadwick and then the emergency services.

15. The CSI report shows that the house phone remote unit was found in the kitchen of the Property with blood on it. Mr Gilchrist suggested to the Claimant that this must have been because he had at least picked it up and since the base unit was located in the sitting room at the Property, that must mean that the Claimant carried it from there to the kitchen. The Claimant was unable to recall if this was so or not. A mobile phone was found next to the house phone in the kitchen, also with blood stains on it. Mrs Chadwick was not able to recall the phones being answered when she rang the property as I have described. I accept that evidence. Thus I conclude on the balance of probabilities that the Claimant handled the phones probably when Mrs Chadwick rang them but that he did not pick up the calls.

16. It is common ground that the Claimant sought to inflict harm on himself much as he described in the police interview that I have referred to above. The wounds concerned are described in detail by Mr de Carpentier in his statement that I referred to earlier in this judgment. I accept this evidence.

17. As I have said already, there is a single joint psychiatric expert who did not give oral evidence but submitted the reports referred to above. I turn to that evidence in a moment. It would have assisted me significantly in my evaluation of this material if I had available to me the conclusions of the Judge who presided at the Crown Court trial because I think it likely that he or she would have been asked to approve the acceptance by the Crown of the proposed plea, and it would also have assisted if I could have seen the

sentencing remarks of that judge. I regret that neither party has even attempted to obtain that material.

18. Dr Barlow concluded that the Claimant:

i) Was " … not unaware of the nature and quality of his actions nor would he have been unaware that what he was doing was wrong …" and thus did not have available to him a defence of insanity; but

ii) Was entitled to rely on the partial defence to a charge of murder on grounds of diminished responsibility because in his opinion the Claimant satisfied the tests set out in section 2(1) of the Homicide Act 1957 as amended by the Coroners and Justice Act 2009 because amongst other things the Claimant was at the relevant time suffering from a mental illness namely delusional disorder (ICD-10 F22.0) that " … impacted upon his capacity to form a rational judgment at the material time and, to a lesser extent, to exercise control over his behaviour …" .

In his supplemental report Dr Barlow expanded on this analysis by saying:

"Specifically, Paul Chadwick developed several associated beliefs that others were spreading false rumours about his sexuality. Events in his environment, which objectively may have been innocuous or unobservable to others, tended to confirm his abnormal persecutory beliefs. There is some evidence that he may also have experienced auditory hallucinations. His mood was profoundly depressed and it is possible to interpret this clinically as either or both a cause and a consequence of his psychosis. His illness had a fairly rapid onset and although its serious nature appears to have been suspected by his GP, he had not been properly or effectively evaluated by mental health services prior to the offence.

I would describe his condition at the material time as severe."

19. Whilst accepting that there was no objective basis for testing the position, Dr Barlow's opinion was that the Claimant's capacity to form a rational judgment was " … substantially, perhaps even severely, impaired at the time of the offences as a result of his severe psychotic illness." Dr Barlow's opinion was that the Claimant's capacity " … to exercise control

over his behaviour was substantially impaired by his mental condition …" and that " … the sole cause of Paul Chadwick's behaviour on the day in question was the fact that he was suffering from a severe psychotic mental illness" . However, in answer to questions asked of him by the parties, Dr Barlow added that the Claimant retained some capacity to exercise control over his actions and that in acting as he did, the Claimant " … acted in accordance with a decision he had made to kill his partner and son. This decision was made in the context of a profoundly abnormal mental state in which his perception of reality and thought processes were grossly disturbed". Dr Barlow's attention was drawn to his description of the Claimant as acting in a purposeful manner. He was asked to explain what that referred to. He responded by reference to the Claimant's actions, which he identified as including "… attempting to smother his partner with a pillow, collecting a knife, stabbing his partner and child and then injuring himself. These actions were purposeful insofar as they were in accordance with what he later said were his intentions at the time ." Dr Barlow agreed that the Claimant had significant control over his actions despite the condition he was suffering from. I accept Dr Barlow's evidence as I have summarised it.

20. It is now necessary to say something about the property dealings of the Claimant and Deceased. It is not in dispute and I find that the Claimant and Deceased first met in Boston in Lincolnshire where the Claimant was then working and where the Deceased had been born and brought up and where she then lived with her widowed mother. The couple moved to Lancashire, where the Claimant had been born and brought up and where his parents lived, in or about 2005. On 8 July 2005 the Claimant and Deceased purchased a property together at 5 Westgate Park Road, Westgate, Morecombe ("the Westgate Property").

21. In 2008, the parties entered into an express Declaration of Trust concerning the Westgate Property by which they declared it to be held by them as tenants in common subject to the condition that if the property was sold the Claimant was to receive £20,000 from the sale and the Deceased £95,000 and any balance was to be divided equally between them. The explanation for this (which the Claimant accepted in the course of his cross

examination) was that £95,000 had been received by the Deceased from her mother which had been used to reduce or discharge a loan secured against the Westgate Park Road property. The declaration reflected the contributions that each had made to the acquisition of that property. The Claimant told me and I accept that the Declaration of Trust followed a visit to solicitor that took place at his suggestion.

22. The Westgate Property was sold and after a period in rented accommodation, the Claimant and Deceased purchased the Property. That was paid for from the proceeds of sale of the Westgate Property. It thus represented money that the Deceased had received from her mother to pay off the mortgage over the Westgate Property. It is common ground and I find that the Property has a value of £60,000, that the Claimant has received or is entitled to receive £30,000 in respect of his half share in that property, the acquisition of which was funded from money received by the Deceased from her mother.

23. It was also common ground and I find that the Claimant is entitled to and has received or will receive half of the sums standing to the credit of the couple's joint account but that the, or most of the, money credited to that account represented money that had been inherited by the Deceased. I have explained earlier the source of the remaining substantial sums comprised in the estate as being sums received from a pension scheme maintained by the Deceased and a death benefit policy to which the Deceased subscribed by reason of her part time employment by Marks & Spencer.

Does the Forfeiture Rule Apply?

24. The Claimant contends that the Forfeiture Rule is of no application to at least some cases of manslaughter and that it ought not to apply in this case given the medical evidence concerning the mental health of the Claimant on 9 April 2013 when he unlawfully killed his partner and son.

25. In my judgment the effect of the decision of the majority of the Court of Appeal in Dunbar v. Plant (ante) and the authorities that followed that decision (Dalton v. Latham (ante) and Re Land Deceased (ante)) render that submission entirely unarguable. Philips LJ could not have been clearer in his

view that since the passage into law of the Forfeiture Act 1982 there was now " … no reason for the court to attempt to modify the forfeiture rule. The appropriate course where the application of the rule appears to conflict with the ends of justice is to exercise the powers given by the Act" . As Judge Norris QC observed in Re Land Deceased (ante), that reasoning must be regarded as part of the ratio of the majority. As Patten J put it in Dalton v. Latham (ante), the decision of the majority in Dunbar v. Plant (ante) " … must now be taken to be a binding statement of the law as to the application of the rule of public policy. It applies to all cases of unlawful killing including manslaughter by reason of diminished responsibility …" I could depart from this analysis only if I considered that both Judge Norris QC and Patten J were plainly wrong. Not merely do I not consider that either was plainly wrong but in my judgment they were both entirely correct. In those circumstances, I do not propose to consider that point further.

Should The Effect Of The Forfeiture Rule Be Modified In This Case?

26. In my judgment the justice of this case does not require that I modify the effect of the Forfeiture Rule in the circumstances of this case. My reasons for reaching that conclusion are as follows.

27. The " … first and paramount consideration must be whether the culpability attending the beneficiary's criminal conduct was such as to justify the application of the forfeiture rule at all. " In an earlier section of his judgment in Dunbar v. Plant (ante), when considering how hypothetically the Judges might have developed the Forfeiture Rule but for the intervention of Parliament, Philips LJ commented that in his view the only logical way of reforming the Rule would have been to dis-apply it where on the facts the crime involved such a low degree of culpability or such a high degree of mitigation that " … the sanction of forfeiture, far from giving effect to the public interest would have been contrary to it" . It was this view that is reflected in Philips LJ's later conclusion that the first and paramount consideration must be the culpability attending the Claimant's conduct.

28. On the facts of this case, in my judgment, whilst the level of culpability is reduced and even perhaps significantly reduced by the impact of the mental disorder from which the Claimant was suffering on 9 April 2013, it was not

eliminated or reduced to the level where it could properly be said to be so low that to give effect to the Forfeiture Rule would be contrary to the public interest. I say that for the following reasons.

29. As is apparent from the statutory definition of the partial defence of diminished responsibility – as to which see Paragraph 18(ii) above - that partial defence is available to those who kill while suffering from an abnormality of mental functioning that caused, or was a significant contributory factor in causing, the defendant concerned to act as he did. The evidence that is available does not establish that the abnormality from which the Claimant was suffering caused the Claimant to kill either the Deceased or his son. Dr Barlow's original opinion was that the condition from which the Claimant suffered merely "impacted upon his capacity to form a rational judgment and, to a lesser extent, to exercise control over his behaviour.". In his supplemental report, Dr Barlow reports that the Claimant's illness had substantially impaired his capacity to control his behaviour. In his responses to questions from the parties, Dr Barlow defined what he meant by "substantial" in this context as meaning "more than trivial" but "less than total" – see page 3 of 7 of his response to the parties questions. He confirms that the Claimant acted in accordance with a decision to kill his partner and son, that he was aware of the nature and quality of his acts and that he was aware that what he was doing was wrong – see page 3 of 7 of Dr Barlow's response to the parties questions – and he agreed with the proposition that the Claimant had significant control over his actions (including how he decided to act) – see page 5 of 7 of Dr Barlow's response to the parties questions. In my judgment this is entirely consistent with the description that the Claimant gave of what had happened in his interview by the police that I referred to in detail earlier in this judgment.

30. Mr Gilchrist cross examined the Claimant at some length about the ferocity and duration of the assaults on his partner and child, about the number of times that he returned to the assault of each and about what he was doing between the time when the assaults took place and the time when his mother came to the Property – a gap of some hours. If the position had been that the evidence established that the abnormality from which the Claimant was suffering caused the Claimant to kill either the Deceased or

his son then the ferocity of the attacks, their duration, the number of times that he returned to assault each and his failure to take any steps to seek help inthe immediate aftermath would have been immaterial if and to the extent these factors had been caused by the abnormality from which the Claimant had been suffering. However the medical evidence in this case does not come close to establishing that to be the case.

31. In my judgment therefore, "… the culpability attending the beneficiary's criminal conduct was such as to justify the application of the forfeiture rule …" . . In those circumstances, it is next necessary to ask whether, looking at all the material circumstances in the round, " the justice of the case requires " a modification of the effect of the forfeiture rule.

32. What will be the material circumstances, and what weight can be given to them, will be different in each case where the question has to be considered. The list identified by Mummery LJ in Dunbar v. Plant (ante) is not and was not intended to be comprehensive as is apparent from the formulation he adopted It does however provide helpful guidance as to the factors that are likely to be material.

33. I turn first to the conduct of the Claimant. There is really little or nothing that I can sensibly add to what I have said already in relation to what Philips LJ identified as the first and paramount consideration. In my judgment on the evidence there was sufficient culpability to justify the application of the Forfeiture Rule. If and to the extent that in the circumstances of this case the nature and gravity of the offence is material apart from the question of culpability, then I find and conclude that the nature and gravity of the offences committed by the Claimant are factors that weigh against the disapplication of the Forfeiture Rule. The relevant factors include (a) the number of wounds inflicted by the Claimant, (b) the number of non fatal prior to death wounds inflicted by the Claimant, and (c) the number of times he returned to attack each victim when viewed against my assessment of the Claimant's culpability.

34. I turn next to the conduct of the Deceased. There is absolutely nothing whatsoever in the evidence that could even arguably rationally explain what occurred. The conduct of a victim may be relevant in cases where for

example the victim has subjected the assailant to years of intolerable physical or mental abuse. It has no role to play in this case. The evidence suggests that the couple's relationship was at all times entirely stable, loving and had been long lasting. Had there been any difficulties it might for example have been expected that the Deceased would have disposed of her estate differently from the disposals set out in the will. In fact she appointed the Claimant to be (a) her executor, and (b) the guardian of their child. She left the entirety of her estate to the Claimant and only to her children in the event that he did not survive her for more than 28 days. The Claimant's own evidence is that the relationship was a loving and stable one. There is no evidence to contrary effect. Consistently with that being the case, on 8 April 2013, it was the Deceased who accompanied the Claimant when he visited his GP.

35. The other factor which in my judgment weighs substantially in the balance against disapplying the Forfeiture Rule concerns the source of the Deceased's estate. As I have explained, most if not all her interest (and that of the Claimant) in the Property has been funded by what the Deceased had been given by her late mother which in turn had been inherited by her, principally from her late husband. It was the absence of a factor such as this which was considered significant by the majority in Dunbar v.Plant (ante) – see Paragraph 10 above. In addition most of the rest of the Deceased's estate is derived either from funds given to the Deceased by her mother or which are funds that come from her employment (arrears of salary, death benefits and pension plan payments).

36. I take into account the financial position of the Claimant. He has or will have his share of the property and a half share of the sums credited to the joint account at the date of the Deceased's death. When the Claimant will require access to these funds is unclear. I have no detailed prognosis or report concerning his current condition. Whilst there is no evidence that suggests the Claimant's release is imminent, I have proceeded on the basis that there will come a time when he will be released and will require funds to help him re-establish his life in the community. Whilst it is clear that the Claimant has earned his living in the past from semi skilled self employed gardening work, I accept that it may be difficult for him to earn his living in

that way in the future. Whilst these factors weigh in the balance in favour of modifying the effect of the Forfeiture Rule, in my judgment they do not outweigh the other factors to which I have referred.

37. I also take into account the fact that those who will benefit in the event that the Forfeiture Rule is applied are largely aunts and cousins of the Deceased who she did not intend to benefit in the event of her death as is apparent from the terms of her will. That is a factor which weighs in the balance against applying the Forfeiture Rule although not heavily. The will was not prepared on the basis that the Deceased would be unlawfully killed by the Claimant. In any event, again in my judgment this factor is not one that either of itself or in combination with the position of the Claimant outweighs the other factors that I have referred to above and which in my judgment lead clearly to the conclusion that the application of the Forfeiture Rule should not be modified in the circumstances of this case.

Conclusions

38. For the reasons set out above I conclude:

i) The Forfeiture Rule applies in the circumstances of this case; and

ii) The justice of this case does not require the effect of the Rule to be modified. In those circumstances and for those reasons, this claim is dismissed.