

Coercive Control and the consequences of forfeiture – Challen v Challen [2020] EWHC 1330

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Sally Challen's case has become well known in recent years, as a miscarriage of justice that resulted in a woman spending years behind bars for an offence she did not commit. The facts were not in dispute. In August 2010 she had reconciled with Richard, her partner and husband of forty years, after previously leaving the matrimonial home and starting divorce proceedings. Over lunch, she beat him to death with a hammer. Subsequently dissuaded from committing suicide, she was convicted of his murder and sentenced to life imprisonment, with the prosecution describing her as jealous and possessive, and the jury rejecting her defence of diminished responsibility. In 2019 the Court of Appeal allowed her appeal, quashed her conviction, and directed a re-trial to reconsider the defences of diminished responsibility and provocation, in the light of new expert evidence about the effect of coercive control in a relationship. Richard had behaved appallingly towards Sally during their relationship. Finally in September 2019 the Crown accepted the plea that Sally Challen had offered throughout, that of guilty to manslaughter by reason of diminished responsibility. Edis J sentenced her to 9 years and 4 months imprisonment, with the effect that she was immediately released.

The issue for the High Court concerned the devolution of Richard's estate. As Sally had unlawfully killed Richard, the 'forfeiture rule' applied. Richard's property, including his half share in the matrimonial home, passed not to Sally but directly to their two children. They had stuck by her, and she did not wish to take back that which they had received. The consequence of the 'forfeiture rule' was that the state had levied a very substantial sum by way of inheritance tax on Richard's estate, which would not have been levied had the estate passed to Sally. Sally applied for relief from forfeiture under the Forfeiture Act 1982. This gives the Court power to relieve a person whose right to succeed has been forfeit from the consequences of said forfeiture, wholly or in part, if it considers it in the interests of justice so to do.

His Honour Judge Matthews considered the background to the 'forfeiture rule' at common law, noting that it in fact dated from 1870, when an earlier principle of escheat was abolished. This case then threw up a number of technical issues. The principal

technical issues concerned the date on which Sally was convicted of unlawful killing. The 1982 Act requires an application for relief to be made within three months of a conviction for unlawful killing (section 2(3)), and there is now power to extend time for making the application. This gave rise to two questions. The first was when Sally was convicted – did her conviction relate to the murder conviction, or the subsequent manslaughter conviction? The second concerned the date on which the manslaughter conviction occurred. She had tendered a plea to her re-trial on 5 April; the Crown indicated informally that it would accept this in late May, and she next appeared at a hearing and was sentenced on 7 June. As her application was made on 6 September, it would only be in time if 7 June was the relevant date.

The Court considered a suggestion in *Rossdale – : Probate and Administration of Estates*, 5th ed 2016 that time starts to run from the date of a murder conviction, even if that is subsequently reduced on appeal to manslaughter. It held that this was not correct as a matter of statutory interpretation, and that either a murder conviction was not a conviction for the purposes of the time-bar; or that when quashed it no longer counted as a conviction, and that the relevant conviction was the subsequent manslaughter conviction.

As to the second issue, the judge held that time did not run from the date on which the plea was tendered or the date on which the Crown intimated it would be accepted. It could run from no earlier than the date on which the plea was accepted by the Court, this being 7 June in the present case. Although it did not make a difference to the result whether the relevant date was the date on which the Court accepted the plea or the date of sentence (both occurring on 7 June) the Court considered that, notwithstanding the contrary assumption of HHJ Norris QC in Re Land [2007] 1 All ER 324, the relevant date was the date of sentence and final disposal.

As to the merits of the application, the Court analysed the leading Court of Appeal judgment of Dunbar v Plant [1998] Ch 412 and considered that it had to view the justice of the case broadly. It was not the purpose of the process to further punish Sally. It laid stress on the sentencing remarks of Edis J and, in particular, his comment that Sally felt trapped and manipulated because she was trapped and manipulated. The two most significant factors referred to were that Sally had committed this offence only because of her diminished responsibility and the coercive control applied to her; and that Richard was at least to a degree responsible for his own predicament. This was a tragedy for all parties that was at least in part of Richard's making. The Court also noted that the purpose of the claim was to alter the incidence of tax payable. Whilst it did not state that this was a reason to justify the granting of the relief, it also did not state that it inhibited it. Equally, there was no evidence that Richard did not want Sally to benefit from his estate on his death, although the Court noted that it may well have been the case that Richard

did not contemplate anyone other than himself benefitting from it. Considering the matter in the round, this was an appropriate case to grant full relief to Sally.

There are two further points to take away from this judgment, one legal and one personal. The legal point is that the judge was at pains to make it clear that this was a case that was exceptional in its circumstances, as indeed it was. It should not be taken as indicating that all or indeed many of the cases of homicide resulting from coercive control will necessarily attract the same result. The second point, which indicated how the forfeiture application is a very minor part in a tragedy for all concerned, is that in the criminal proceedings Richard and Sally's children made a victim impact statement in which they recounted their feelings of guilt in not being able to protect Sally. Those feelings appear to be wholly unjustified, but they exist. Richard's coercive control put a blight on all members of that family and its consequences continue. The success of the forfeiture application is a small element of justice in the scheme of things.

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