

**EASTERN CARIBBEAN SUPREME COURT
GRENADA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2023/0239

BETWEEN:

VERONICA DATHORNE-BICKNELL

Claimant

and

FERRON LOWE

Defendant

Before:

The Hon. Mr. Justice Raulston L.A. Glasgow

High Court Judge

Appearances:

Ms. Gennilyn Ettienne for the Claimant

Mr. Ruggles Ferguson KC and Ms. McKaeda Augustine for the Defendant

2025: November 20th;
2026: January 5th, 8th; (Submissions)
March 30th.

JUDGMENT

- [1] **GLASGOW, J.:** The claimant (hereafter referred to as “Mrs. Bicknell”) is the widow of Robert Newton Bicknell, deceased, (hereafter referred to as “Mr. Bicknell”) who died on 24th January, 2017. Mr. and Mrs. Bicknell were married on 1st June, 2014.
- [2] During Mr. Bicknell’s lifetime, the defendant, an attorney at law, (hereafter referred to as “Mr. Lowe”) was Mr. Bicknell’s legal practitioner. Mr. Lowe prepared Mr. Bicknell’s will dated 18th April 2016 (hereafter referred to as “the will”). Mr. Lowe is the named executor of the will.

- [3] Mrs. Bicknell contests the will. She claims that it is invalid for want of due execution. In this regard, she asserts that the will was not executed by Mr. Bicknell in the presence of two witnesses, present at the same time.
- [4] Mrs. Bicknell also avers that Mr. Bicknell did not know or approve of the contents of the will.
- [5] Mrs. Bicknell further asserts that following Mr. Bicknell's death, Mr. Lowe committed trespass on Mr. Bicknell's property situate at Fort Jeudy, St. George by, among other things, entering the property and selling Mr. Bicknell's dwelling house.
- [6] On 3rd May 2018, Mrs. Bicknell filed an amended fixed date claim against Mr. Lowe seeking, among other relief, declarations that the will is invalid and that Mr. Bicknell died intestate; an order that Mr. Lowe provide an account of his dealings in the estate; an order for possession of property situate at Fort Jeudy; damages for trespass of property situate at Fort Jeudy; an injunction restraining Mr. Lowe from disposing of the property in Fort Jeudy; interest and costs.
- [7] Mr. Lowe denies that Mr. Bicknell's will is invalid, and puts Mrs. Bicknell to strict proof of the allegation of non-compliance with the Wills Act, Cap 340 of the Revised Laws of Grenada. Mr. Lowe further denies that in assuming the role of executor he violated any provision of law, as he is the named executor in Mr. Bicknell's will.

The Evidence

- [8] The will, in substance, devises the following:

“... I direct that my house at Lot 72 Fort Jeudy in the parish of Saint George be sold and the proceeds of the sale together with the balance of money in my Scotia Bank Account shall be given as follows:

- (a) Ten percent (10%) to my wife Veronica Dathorne
- (b) Ninety Percent (90%) to NEWLO

I direct that my body be cremated in a simple box soon after my death. I do not want any funeral services, viewing of my body nor any flowers. The only individuals who are to be allowed to view my body or witness my cremation are George Radix of Westerhall Point and my wife Veronica Dathorne. If my wife wishes to have one friend accompany her she can do so.

After my cremation my ashes are to be taken on the beach in front of the said Lot 72 at Fort Jeudy aforesaid and sprinkled in the ocean.

I direct that my necklace with the diamond pendant be placed in the deep ocean where my ashes are sprinkled.

I direct that any dog in my care be put to rest after my death.

I give devise and bequeath all the rest and residue of my property both real and personal whatsoever and whosoever situate not hereby or by any codicil hereto specifically disposed of to NEWLO..."

Mrs. Bicknell's Evidence

Mrs. Bicknell

- [9] Mrs. Bicknell averred that she was married Mr. Bicknell for over two years before he died. She stated that she knew Mr. Bicknell to be a US army veteran and to have held two masters degrees.
- [10] Mrs. Bicknell asserted that the will was made by a person who did not know Mr. Bicknell. Further, she states the will's contents run contrary to decisions made between her and Mr. Bicknell during their life together as a couple. She testified that Mr. Bicknell wanted to make specific provisions with respect to his remains after his death, that he wanted to be cremated and did not want a funeral service.
- [11] Initially in cross-examination Mrs. Bicknell testified that she was not aware that Mr. Bicknell wanted to make provision for the New Life Organisation (hereafter referred to as "NEWLO") to be a beneficiary under his will. Later however, she admitted that she was aware of a previous will made by Mr. Bicknell prior to the present will under contention. Mrs. Bicknell accepts that the previous will made provision for NEWLO. However, she observed, that in this previous will the entire of Mr. Bicknell's estate was devised to her, and a mere \$50,000.00 was devised

to NEWLO. She further admitted under cross examination that there were similarities between the previous will, of which contents she was aware, and the present will under contention.

[12] Mrs. Bicknell insisted that Mr. Bicknell could not have made the present will, given that it states that his Fort Jeudy property should be sold after his death, when he disposed of that property before he died.

[13] Mrs. Bicknell accepted also that she approached Mr. Lowe in the first quarter of 2016 to inquire about being included on the title to Mr. Bicknell's Fort Jeudy property. Mrs. Bicknell agreed that she wanted her name to be added to the title deed for the Fort Jeudy property, but that she did not want Mr. Bicknell's share of the property.

Thelma Charles

[14] Evidence was also given by Thelma Charles, one of the witnesses to Mr. Bicknell's will.

[15] In the beginning of her evidence, Ms. Charles sought permission to amend paragraph 21 of her witness statement which stated:

"After Bob signed the document he left my presence and I went from in front of the entrance to the Yacht Club Office where I had been standing when I signed the document and sat back on my seat inside the office to deal with the customer who had come to do laundry."

[16] Ms. Charles pointed out that that statement was not correct, and that Mr. Bicknell did not sign the document in her presence.

[17] Ms. Charles testified that when Mr. Bicknell asked her to sign his will, she did not see any other signature on the paper. She stated she could not see whether there was any writing on the paper, and that there was no other writing besides what she had signed.

- [18] Ms. Charles testified at trial that she was employed at the Grenada Yacht Club for approximately 18 years, ending in 2021. She held the position of Administrative Assistant.
- [19] Ms. Charles' evidence was that she signed a single blank paper outside of the Yacht Club Office, which paper resembled a raffle sheet. She said that she used the palm of her hand to press the paper in order to sign it. She said that Mr. Bicknell did not sign the paper at the time she signed, nor did he indicate that he was required to sign or that he had signed it. She further testified that she is not in the habit of signing blank papers or documents of which she has no knowledge. Ms. Charles admits however that the will bears her handwriting.
- [20] Ms. Charles further explained that at the time that Mr. Bicknell approached her, there was no one around him or accompanying him. She reiterated that she did not sign the document in Mr. Bicknell's presence. Equally, she claimed, neither Shanin Anthony, the other witness to the will, nor Mr. Bicknell signed in her presence.
- [21] In her witness statement, Ms. Charles originally stated that after signing the blank document, she returned to the administrative office to deal with a customer. At trial, however, she changed this testimony to indicate that she did not go back to the administrative office but instead went to the laundry room, which is accessible from the yard of the Yacht Club.

Shanin Anthony

- [22] On the day of trial, Mrs. Bicknell's counsel informed the court that Ms. Shanin Anthony, for whom a witness statement was filed, had passed away, but that no death certificate was obtained in time for trial.
- [23] The court thereafter ordered that Mrs. Bicknell produce a death certificate within seven days.
- [24] Mrs. Bicknell has failed to so comply with the court's order, and therefore the court will not give consideration to Shanin Anthony's evidence.

Mr. Lowe's Evidence

- [25] Mr. Lowe's case is that from 2014 until his death, he was Mr. Bicknell's attorney. Mr. Lowe states that he also provided personal assistance to Mr. Bicknell, including transportation to conduct his personal affairs.
- [26] Mr. Lowe recounts that on 18th April 2016, Mr. Bicknell told him that he wanted to make a will, and that he wanted Mr. Lowe to serve as the executor of his will. Mr. Lowe testified that he took instructions from Mr. Bicknell, dropped him off at the Grenada Yacht Club, then went to his office in St. George's to prepare the will.
- [27] After the will was prepared, Mr. Lowe returned to the Grenada Yacht Club where he met with Mr. Bicknell and explained to him the formalities associated with the signing of a will. Thereafter, Mr. Lowe claims, Mr. Bicknell took the will and went into the office of the Yacht Club. Shortly thereafter, Mr. Bicknell returned and handed Mr. Lowe the will, which contained his signature and that of two witnesses.
- [28] Mr. Lowe testified that when Mr. Bicknell died, he, Mr. Lowe made arrangements for his burial and took possession of his estate. Mr. Lowe also pointed out that with respect to the Fort Jeudy property, a contract for the sale therefor had been executed by Mr. Bicknell on 20th April 2016, prior to his death. Following his death in 2017, the sale was completed, with net proceeds of \$517,175.45. The deed of conveyance is dated 1st September 2016 and was recorded on 13th April 2017. The signature to the deed of conveyance signed by Mr. Bicknell prior to his death was witnessed by Mr. Lowe.

Legal Analysis

Whether the Will is valid

- [29] The overarching question for the court's determination is whether the will dated 18th April 2016 is valid or ought to be pronounced against.

[30] **Section 6 of the Wills Act CAP 340** states that:

“No will hereafter made shall be valid unless it is in writing, and signed in the manner hereinafter required by the testator or by some other person in his or her presence and by his or her direction; and unless the signature is made or acknowledged by him or her in the presence of two or more witnesses present at the same time, who shall attest and subscribe the will in his or her presence; but no form of attestation shall be necessary...”

[31] In substance, the statute requires that the testator must sign (or acknowledge their signature) in the presence of two witnesses (present at the same time), who must then sign in the presence of the testator.

[32] Mrs. Bicknell alleges that the will does not comply with these formalities. Specifically, she contends that Mr. Bicknell never executed nor acknowledged the will in the presence of the attesting witnesses being present at the same time. Mrs. Bicknell further alleges that the contents of the will lack Mr. Bicknell's knowledge and approval.

Due Execution of the Will

Mrs. Bicknell's submissions

[33] Mrs. Bicknell argues that the will was not validly executed in accordance with the formalities required for a valid will.

[34] Counsel relies on Ms. Thelma Charles' evidence, who testified that she signed a document at Mr. Bicknell's request but: did not know the document was a will; did not see Mr. Bicknell sign it; and was not asked to witness Mr. Bicknell's signature.

[35] Counsel submits that Ms. Charles' evidence raises serious doubt that the will was executed in the presence of two witnesses present at the same time, or that Mr. Bicknell's signature was acknowledged before them.

[36] Counsel relies on **In re Groffman**¹, where the English Probate Division Court held that there was no acknowledgment by the deceased in the presence of two or more witnesses present at the same time, in circumstances where the deceased

¹ [1969] 1 WLR 733 (Ch D)

previously signed his will and subsequently asked two friends to witness it. There being no convenient space in the room in which they were, one of the witnesses took the deceased into an adjacent room, where the deceased took the will from his pocket, unfolded it and asked the witness to sign giving his occupation and address. The witness noticed the deceased's signature on the will and signed his name. He then returned to the other room and asked the other witness to go and sign, which he did in the presence of the deceased, the first witness not going with him.

[37] Counsel further relies on **Brown v Skirrow**² where it was held that:

“The expression ‘in the presence’ in s. 9 of the Wills Act must be taken to mean actual visual presence.”

[38] Counsel argues that: Mr. Bicknell did not meet with the two alleged witnesses at any time or on the alleged date of the 2016 will; Mr. Bicknell was not visibly seen signing the will by anyone (including Mr. Lowe); the attesting witnesses did not execute the will in the presence of each other, nor were they present together at any time when Mr. Bicknell signed or acknowledged his signature; and further that the document signed was not a will, but a single blank page.

[39] Counsel for Mrs. Bicknell also refers to the case of **Weatherhill v Pearce**³, where it was held that:

“Where a testator wrote his name in his own handwriting in the attestation clause and the evidence indicated that, by doing so, he had intended to give effect to the document as his will, the handwritten name was a sufficient signature for the purposes of s 9 of the 1837 Act and, although the testator had not drawn the two attesting witnesses' attention to that signature, the fact that he had offered the document to them as a will for signature was sufficient (since no express declaration was necessary) to constitute an acknowledgment of his signature to the witnesses under s 9. It followed that, in the absence of evidence indicating that the attestation was defective in a material respect or that both witnesses were not present together with the testatrix at the same time in order to be witnesses to the making of her will, the requirements of s 9 of the 1837 Act had been satisfied and the will had been validly executed.”

² [1902] P3

³ [1995] 2 All ER 492

- [40] Counsel concludes that there is no evidence of Mr. Bicknell's compliance with Section 6.

Mr. Lowe's submissions

- [41] Mr. Lowe submits that the will bears an attestation clause, and Mr. Bicknell's and two witnesses' signatures in the appropriate places. Counsel for Mr. Lowe urges the court to apply the common law presumption of due execution.

- [42] Counsel argues that where the testator's and witnesses' signatures appear in the right places and there is an attestation clause, very strong evidence is needed before it is possible for the court to find that the will was not duly executed.

- [43] Counsel refers to the case of **Ashton Coomansingh v Jean Thompson**⁴, and submits that Mrs. Bicknell has not provided cogent and credible evidence to rebut this presumption with positive and reliable evidence.

- [44] Counsel also refers to the case of **Channon v Perkins**⁵, where Neuberger LJ stated:

“The principled reason for being reluctant to hold that a Will, properly executed on its face, representing the apparent wishes of the testator, should be set aside on extraneous evidence, is that one is thereby declining to implement the wishes of the testator following his death.”

- [45] Further reliance is placed on the case of **Wright v Sanderson**⁶. In that case, the testator had written a holograph codicil to his will, and included an attestation clause. He asked two witnesses to 'sign this paper', which they did. Their evidence, given four to five years later, was that they did not see the attestation clause, nor did they see the testator sign. One witness said that she did not know what she was signing; the other said that she did not know what she was doing. Although the trial judge did not doubt their honesty, he felt that he could not rely

⁴ GDAHCV2002/0521 decision of 8th April 2011

⁵ [2005] EWCA Civ 1808

⁶ (1884) 9 PD 149

on their evidence to rebut the presumption arising from the regularity of the codicil on its face when no suspicion of fraud arose. The Earl of Selborne LC warned⁷:

"I do not know how many wills, really well executed and duly attested, might not be brought into peril if, upon the sort of evidence which we have here, after a lapse of several years, probate were refused."

[46] Counsel also relies on **James v Scudamore and Others**⁸ where the court rejected challenges to a will and codicil on the basis of inconsistent witness recollections. Despite allegations that the testator had not signed in the presence of both witnesses and that the document had been pre-signed or altered, the court upheld the will, noting the regularity of the attestation clause and absence of credible contrary proof.

[47] In addition, counsel references the Grenadian decision of **Solomon v Thomas**⁹, where Alleyne J. referred to the English case of **Neal v Denston**¹⁰ with approval. The presumption of due execution was applied and the court pronounced in favour of the validity of a will, despite the attesting witnesses' testimony that they were not present when the testator signed, and that the testator did not acknowledge his signature in their presence.

[48] In **Olwen Jeremiah v Winston Tomlinson et al**¹¹, a case out of the jurisdiction of Jamaica, at page 19 Langton LJ was quoted as referring to **Wyatt v Berry**¹² and to the decisions in **Wright v Sanderson**¹³ and **Lloyd v Roberts**¹⁴ as follows:

"The bearing of these two cases appears to me to be quite clear. They really go to this – that where there is any doubt about the recollection of the attesting witnesses, where there is anything from which the court can fairly say that the will ought to be held as good and that the recollection of the attesting witnesses ought not to be relied on as against the will, the court may say that it is satisfied that the will was duly executed."

⁷ at p. 161

⁸ [2023] EWHC 996 (Ch)

⁹ GD 1999 HC 3

¹⁰ Times Law Reports August 19, 1932

¹¹ Claim No. 2008 HCV03701

¹² 1893 P 5

¹³ (1884) 50 LT Rep 769, 9 Prob. Div. 149

¹⁴ (1858) 12 Moo P.C 158

- [49] Counsel concludes that these authorities collectively reinforce the principle that, where the will is regular on its face and there is no allegation of fraud, the presumption of due execution will not lightly be displaced, particularly where the evidence challenging execution is unsatisfactory, unreliable, or inconsistent.
- [50] Counsel argues that in the present case, the evidence of the attesting witness, Ms. Thelma Charles, is unreliable and marked by material inconsistencies. Counsel submits that such contradictions substantially undermine the reliability of Ms. Charles' recollections and weaken the evidential foundation of the claimant's case.
- [51] Counsel states that the authorities make clear that a failure of recollection, particularly many years after the event, falls far short of the "strongest evidence" required to displace the presumption of due execution.

The Court's findings

- [52] The will dated 18th April 2016 is, on its face, regular. It was prepared by an attorney-at-law and contains a formal attestation clause. The signatures of the testator and the two attesting witnesses appear in their proper places. In those circumstances, the common law presumption of due execution, encapsulated in the maxim *omnia praesumuntur rite esse acta*, arises.
- [53] The effect of that presumption is well established. Where a will appears duly executed, the court will require the strongest evidence before concluding that it was not executed in accordance with statutory formalities. This principle was articulated in **Wright v Rogers**¹⁵ as follows:

"The court ought to have in all cases the strongest evidence before it believes that a will, with a perfect attestation clause, and signed by the testator, was not duly executed, otherwise the greatest uncertainty would prevail in the proving of wills. The presumption of law is largely in favour of the due execution of a will, and in that light **a perfect attestation clause is a most important element of proof**. Where both the witnesses, however, swear that the will was not duly executed, and there is no evidence the

¹⁵ (1869) LR 1 P&D 678

other way, there is no footing for the Court to affirm that the will was duly executed. Such was the case of *Croft v. Croft*. **Here we have only the evidence of one witness, and we find the signature of the other attached to a full attestation clause. Taking all the circumstances into consideration, I have come to the conclusion that the will was well executed, and that I ought not to rely upon the recollection of the witness, seeing that, if he did not himself, in the first instance, affirm the due execution of the will, he stood by and assented to his fellow witness making such affirmation.**" [emphasis mine]

- [54] Similarly, in **Ashton Coomansingh v Jean Thompson**¹⁶, Henry J., as she then was, stated the following:

"If a will, on the face of it appears to be duly executed, the presumption is in favour of due execution... Where the testator's and witnesses' signatures appear in the right places and there is an attestation clause, very strong evidence indeed is needed before it is possible for the court to find that the will was not duly executed."

- [55] I am also guided by the observations of Pereira JA., as she then was, in paragraph 5 of the decision in **Anne Marie MacLeish et al v Avison Albert Marryshow**¹⁷, adopting the reasoning of Lord Neuberger MR in the case of **Gill v Woodall and others**¹⁸ stating:

"16 ...Wills frequently give rise to feelings of disappointment or worse on the part of relatives and other would-be beneficiaries. Human nature being what it is, such people will often be able to find evidence, or to persuade themselves that evidence exists, which shows that the will did not, could not, or was unlikely to, represent the intention of the testatrix, or that the testatrix was in some way mentally affected so as to cast doubt on the will. If judges were too ready to accept such contentions, it would risk undermining what may be regarded as a fundamental principle of English law, namely that people should in general be free to leave their property as they choose, and it would run the danger of encouraging people to contest wills, which could result in many estates being diminished by substantial legal costs.

17. Further, such disputes will almost always arise when the desires, personality and state of mind of the central character, namely the testatrix herself, cannot be examined other than in a second hand way, and where much of the useful potential second hand evidence will often be partisan, and will be unavailable or far less reliable due to the passage of time. As Scarman J put it graphically in *In the Estate of Fuld, deceased* (No 3)

¹⁶ GDAHCV2002/0521 decision of 8th April 2011

¹⁷ Civil Appeal No. 12 of 2010

¹⁸ [2010] EWCA Civ 1430 (14 December 2010) at paras. 16 and 17

[1968] P 675, 714E; 'When all is dark, it is dangerous for a court to claim that it can see the light.' That observation applies with almost equal force when all is murky and uncertain."

[56] In assessing the validity of a Will, the Court of Appeal held that:

"A trial judge, in keeping with relevant statutory provisions, is entitled to arrive at his own conclusions. He has the advantage of seeing and assessing the demeanour and credibility of the witnesses. The evidence of persons present when the deceased gave instructions for her will or its execution, if they were not merely witnesses called into her presence for a few moments, is of considerable weight and this is so particularly where such persons are unprejudiced. ... While the absence of motive by itself is not sufficient to establish credibility, it would be a relevant factor in determining whether Mr. Bernardine and Ms. Frederick were credible as to the circumstances surrounding the making and execution of the 1995 Will by the deceased testatrix Ena Payne."¹⁹

[57] Further, in **Couser v Couser**²⁰ Colyer J stated the following:

"It is clear in what one of the textbooks calls 'the most extreme case' that, provided there is visual contact, which is at least possible, a party may acknowledge a signature."

[58] In addition, in **Blake v Knight**²¹ it was held that positive affirmative evidence by the subscribed witnesses of the fact of signing or acknowledging the signature of the testator in their presence, is not absolutely essential to the validity of a will, and that the court may presume due execution by testator upon the circumstances.

[59] In assessing whether the claimant has displaced the presumption of due execution, I adopt the approach articulated in **James v Scudamore and Others**²²:

"The key principles for the assessment of witnesses are: the consistency or otherwise of the witness's evidence with what is agreed, or clearly shown by other evidence, to have occurred; the internal consistency of the witness's evidence; consistency with what the witness has said or deposed

¹⁹ Civil Appeal No. 12 of 2010

²⁰ [1996] 3 All ER 256

²¹ 163 ER 821

²² [2023] EWHC 996 (Ch)

on other occasions; the credit of the witness in relation to matters not germane to the litigation; lies established in evidence or in the context of the proceedings; the demeanour of the witness; and the inherent probabilities of the witness's account being true.”

[60] In **James v Scudamore et al**²³, the Chancery Division dismissed the claim seeking revocation of probate granted on the basis that a 2002 codicil was invalid for non-compliance with the Wills Act. The party’s position was that witnesses had signed the codicil before the testator, and that the witnesses signed it on a different date to that stated on its face. In addition, it was argued that the signature of the testator who was suffering from the after effects of a stroke was completed by his second wife, who gave all the instructions for the preparation of the codicil. The court held, among other things, that the evidence was not sufficient to disturb the operation of the presumption of regular execution arising from the completed attestation clause which was regular on the face of it, and that the evidence available to the claimant was very far from ‘the strongest’. Further, even if the presumption were displaced, the court stated it would still be satisfied on the evidence that the execution of the codicil was due and in accordance with the terms of the Wills Act.

[61] Mrs. Bicknell’s case rests primarily on Thelma Charles’ evidence. Having considered her evidence, I find that it is materially inconsistent and unreliable.

[62] First, Ms. Charles’ assertion that she signed a completely blank document is inherently improbable. This is particularly so in light of her evidence that she is not in the habit of signing documents without knowledge of their contents. It was also particularly curious in view of the previous posture that she had taken on her witness statement, which she amended at trial, that she had in fact seen Mr. Bicknell sign the will. See paragraph 21 of her witness statement, referred to in her evidence above²⁴.

²³ [2023] Ch 391

²⁴ Paragraph 15 herein

- [63] I also take into account the passage of time between the execution of the will in 2016 and the date of Ms. Charles' evidence. As recognised in **Wright v Rogers**²⁵ and **James v Scudamore et al**²⁶, the court must be cautious in relying on recollections of attesting witnesses given years after the event, particularly where such recollections are inconsistent or uncertain.
- [64] While not making any finding adverse to counsel, it is also not lost on the court that the only testimony to the execution of the 2016 will produced by Mrs. Bicknell happens to be the family member of counsel for Mrs. Bicknell.
- [65] I find that Ms. Charles' evidence falls far short of the clear, cogent and reliable evidence required to rebut the presumption of due execution. At its highest, Ms. Charles' evidence reflects uncertainty, and does not establish non-compliance with **Section 6** of the **Wills Act**. There is therefore no evidential basis upon which the court could conclude that the statutory formalities were not observed.
- [66] By contrast, the will itself, together with its attestation clause, constitutes strong evidence of due execution. There is no allegation of fraud or forgery.
- [67] Taking all the circumstances into consideration, I am satisfied that Mrs. Bicknell has failed to discharge the burden of proof required to rebut the presumption of due execution.

Knowledge and approval of the contents of the Will by Mr. Bicknell

Mrs. Bicknell's submissions

- [68] Counsel for Mrs. Bicknell further submits that the will conflicts with Mr. Bicknell's long-expressed testamentary intentions as understood by his spouse.

²⁵ (1869) LR 1 P&D 678

²⁶ [2023] Ch 391

- [69] Counsel submits that the will was set up and created for the purpose of disposing Mr. Bicknell's property without his knowledge or approval, and that Mr. Bicknell could not have approved the contents of the will.
- [70] Counsel for Mrs. Bicknell further makes references to the cases of **Re Greaves** (Antigua and Barbuda, ECSC High Court, unreported), **Joseph v Francois** (Dominica, ECSC High Court, unreported), and **In Estate of Monica Edwards** (Saint Lucia, ECSC High Court, unreported), which cases have not been produced by counsel.
- [71] Counsel for Mrs. Bicknell also states that on 16th April 2016, an agreement for sale of Mr. Bicknell's property was prepared by Mr. Lowe. In that agreement, Mr. Bicknell agreed to sell the property to a purchaser who was also Mr. Lowe's client, and that two days later, on 18th April 2016, Mr. Bicknell executed the impugned will purporting to dispose of the same property upon death.

Mr. Lowe's Submissions

- [72] Counsel for Mr. Lowe relies on the following from **Tristram and Coote's Probate Practice**²⁷:

"Unless suspicion attaches to the document, e.g. where it is signed by mark, or where the signature indicates extreme feebleness, the testator's execution is sufficient evidence of his knowledge and approval."

- [73] Counsel argues that the provisions in the 2016 will are provisions that came from clear instructions from Mr. Bicknell. Counsel submits that Mrs Bicknell's evidence is consistent with the wishes expressed in the will, in that NEWLO was a beneficiary together with herself. Further, Mrs. Bicknell's evidence confirmed Mr. Bicknell's wishes in respect of his cremation and funeral. Counsel submits that the only issue taken by Mrs. Bicknell seems to be the proportions for distribution of the proceeds of sale of the Fort Jeudy property.

²⁷ 33rd edn., para [3.139]

[74] Lastly, counsel submits that the making of the 2016 will must be seen in the context of the following:

- (1) At the time the will was made, Mr. and Mrs. Bicknell had been married for a very short time;
- (2) At the time of their marriage, both Mr. and Mrs. Bicknell had already acquired their respective properties and were living in their respective homes;
- (3) Both Mr. and Mrs. Bicknell were married before and their respective spouses had passed away;
- (4) Both were enjoying independent lives as retirees; and
- (5) Mr. Bicknell was a humanitarian who wished to make provisions for NEWLO after his death.

The Court's findings

[75] The starting point is that the burden of proving knowledge and approval lies on the party propounding the will²⁸ to prove that the testator knew and approved of its contents²⁹. However, that burden is ordinarily discharged prima facie by proof of testamentary capacity and due execution³⁰. In such circumstances, the court will infer that the testator knew and approved of the contents of the will.

[76] Where, however, there are circumstances which arouse the suspicion of the court, the onus shifts to the propounder to dispel that suspicion and affirmatively satisfy the court that the testator knew and approved its contents³¹.

[77] The writers of **Tristram and Cootes** state that:

“It is not the law that in no circumstances can a solicitor or other person who has prepared a Will for a testator take a benefit under it; but that fact creates a suspicion that must be removed by the person propounding the Will. In all cases the court must be vigilant and jealous³².”

²⁸ Barry v Butlin (1838) 2 Moo PCC 480 at 482

²⁹ Tyrrell v Painton [1894] P 151 at 157

³⁰ Barry v Butlin (1838) 2 Moo PCC 480

³¹ Tyrrell v Painton [1894] P 151 at 157

³² Wintle v Nye [1959] 1 WLR 284

- [78] In the extant case, it is necessary to consider whether any such suspicious circumstances arise. Mrs. Bicknell asserts that suspicion attaches to the will on the basis that Mr. Lowe was involved in its preparation; and the dispositions allegedly conflict with the deceased's prior intentions and subsequent dealings with his property.
- [79] I do not accept that these matters, either individually or cumulatively, give rise to any real or substantial suspicion requiring displacement.
- [80] First, although Mr. Lowe prepared the will and is named as executor, he is not a beneficiary under the will. The authorities make clear that the level of scrutiny is significantly heightened where a draftsman takes a benefit. That is not the case here. The mere fact that a legal practitioner prepares a will and is appointed executor does not, without more, give rise to suspicion.
- [81] Secondly, Mrs. Bicknell's assertion that the will conflicts with Mr. Bicknell's prior intentions is not borne out by the evidence. On the contrary, Mrs. Bicknell herself accepted that Mr. Bicknell had, in an earlier will, made provision for NEWLO and that he held clear and consistent views regarding the disposition of his remains. These matters are reflected in the 2016 will and are therefore consistent with his known intentions.
- [82] Thirdly, I do not accept that the existence of an agreement for sale dated 16th April 2016 gives rise to suspicion. It is neither unusual nor improper for a testator to execute a will dealing with property which he has contracted to sell. The will would operate on such interest as remained to the estate at the date of death, including the proceeds of sale. There is therefore no inconsistency capable of undermining knowledge and approval.
- [83] I accept Mr. Lowe's evidence that the will was prepared in accordance with Mr. Bicknell's instructions. There is no evidence that the contents of the will were imposed upon Mr. Bicknell, or that he was unaware of its terms. In the absence of suspicious circumstances, execution of the will is sufficient evidence of knowledge and approval.

[84] Accordingly, I find that Mr. Bicknell knew and approved of the contents of the will.

Conclusion

[85] For the reasons set out above, I find that Mrs. Bicknell has failed to establish any basis upon which the will ought to be pronounced against. In particular, I am satisfied that the will was duly executed in accordance with section 6 of the Wills Act and Mr. Bicknell knew and approved of its contents.

[86] Accordingly, Mrs. Bicknell has failed to establish any entitlement to the declaratory or ancillary reliefs sought, including the claims for possession, damages for trespass, or injunctive relief.

Order

[87] Accordingly, it is therefore found and ordered as follows:

- (i) The claimant's claim is dismissed;
- (ii) The defendant is ordered to apply for a grant of probate in the deceased's estate and distribute the estate according to the devises in the Will;
- (iii) Costs to the defendant in the sum of \$7,000.00.

Raulston Glasgow
High Court Judge

By the Court

Registrar