

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0429

BETWEEN:

WENDY LOCKIBY

Claimant

and

[1] **KISHA DONESIA EMERY**
[2] **ANN EMERY**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Lisa Taylor for the Claimant

Ms. Lawrene Griffith for the Defendants

2025: March 25th;
April 3rd.

RULING ON REASONS

[1] **ACTIE, J.:** The issue arising in this claim is whether Dominic Celestine Lockiby, (hereafter referred to as “the deceased”) of Conference in the parish of St. Andrew had testamentary capacity to execute a Will. The matter came on for trial on March 25th, and the court having heard the evidence gave a decision propounding against the Will with reasons to follow and does so now.

Background

[2] The claimant is the daughter of the deceased. The second defendant was the caregiver of the deceased. The first defendant is the daughter of the second defendant.

- [3] The claimant states that in or about February 2023, she became aware of a newspaper publication of an application for a grant of probate of a Will dated 14th July 2022 in the estate of the deceased who died on 16th September 2022.
- [4] The claimant contends that the purported Will, not executed in conformity with the Wills Act, is false, invalid and therefore a nullity. The claimant contends that the deceased had diminished mental capacity, was not of sound mind, memory and understanding, and was incapable of forming a signature as he suffered from arthritis in his hands. The claimant further contends that the purported Will was signed contrary to the Golden Rule.
- [5] The claimant in the circumstances seeks among other things an order that the Will of the deceased dated 14th July 2022 be pronounced against; and an order setting aside the application for grant of probate made by the first defendant.

Defendants' case

- [6] The defendants dispute that the Will is invalid and a nullity. The defendants admit that the deceased was elderly and not physically in the best health at the date of the execution of the Will, but aver that the deceased was of sound mind, memory and understanding. The defendants state that the deceased understood the nature and effect of the Will.
- [7] The defendants counterclaim for a declaration that the Will is valid; an order that the caveat entered by the claimant on 1st March 2023 be vacated; and for the application for a grant of probate to proceed in the normal course.

The Evidence

Claimant's Evidence

- [8] Evidence at trial on behalf of the claimant was given by the claimant, Wendy Lockiby, the surviving child of the deceased, and Ella Nyack, sister of the deceased.

The Claimant

- [9] The claimant resides in England while the deceased lived in Grenada. The claimant's witness summary indicated that she regularly contacted her father by phone and by video call. During cross examination however, the claimant stated that she would speak to the deceased primarily through audio calls, and that their conversations were not that regular, being once a month, or sometimes once every two months.
- [10] It is the claimant's evidence the deceased lacked memory and during her last visit to the deceased in May 2022, he called her by her daughter's name, "Shantal". It is also the claimant's evidence that the deceased needed assistance to eat, and that he could not hold a cup or a spoon.

Ella Nyack

- [11] Ella Nyack states that the deceased did not recognize her when she last visited the deceased in July 2022. She said on that visit the deceased could not feed himself and was being fed by the caregiver. She further testified that she was familiar with the deceased's signature from many documents over the years and especially the many cards he wrote to her, and that the signature on the July 2022 Will was not his signature. She further stated that she was surprised that the deceased's bank account did not have sufficient funds for his burial, and it was herself and her brother Abraham Isaac who financed the costs of the burial.

Defendants' Evidence

- [12] Evidence in support of the defendants' case was given by the defendants, Mr. Francis Williams and Mr. George John.

The First Defendant- Kisha Donesia Emery

- [13] It is the evidence of the first defendant that the deceased indicated to her sometime between May to June 2022 that he wanted to write a Will. She said that her sister Amanda who lives in England suggested Mr. Francis Williams, an Attorney-at-law for the preparation of the Will. The first defendant states she called Mr. Williams who came to the house in Conference, St. Andrew. She states that she was in the

veranda and heard Mr. Williams ask the deceased questions, take instructions from the deceased, and that Mr. Williams then returned a few days later for the deceased to execute the Will.

[14] She states that when Mr. Williams returned everybody was in the room including her mother. Her mother pulled a table towards the deceased, and she saw the deceased position himself to sign all three copies of the Will. She states that the deceased took between 10 to 15 minutes to sign the Will as he had to take breaks. When asked further in cross examination whether anyone assisted the deceased in signing the Will, she responded in the negative.

[15] The first defendant gave many contradictory answers during cross-examination. When asked when she began living permanently in the deceased's house at Conference, St. Andrew, she stated it was before the Covid-19 pandemic, thus before the year 2020. Thereafter she stated that she began living there three years ago, during the year 2022, which is the year the deceased died. In addition, the first defendant displayed signs of uneasiness, occasionally covering her face with her hands and laughing at questions asked by counsel for the claimant during cross-examination.

The Second Defendant- Ann Emery

[16] The second defendant was the primary caregiver of the deceased during his lifetime. In justification of the deceased's failure to recognise familial relations during the months leading up to his demise, she states that the deceased had a sense of humour which would cause him to behave as if he did not know persons close to him. She admits that the deceased suffered a stroke in 2021 but states that the stroke did not affect the deceased's speech in any way as he continued to speak the same way. The second defendant recalled in her witness statement the occasion when Ms. Nyack, the deceased's sister, visited in 2022, and stated that the deceased informed her that he did not acknowledge his sister for reasons relating to gossip.

[17] There was no justification offered by the second defendant however in explanation to the court on the occasions where, as it was put to her, the deceased did not

recognise his doctor, Dr. Joseph. When specifically asked during cross-examination of the instance where the deceased failed to acknowledge his doctor, the second defendant stated that that was “strange”.

[18] The second defendant recounted the circumstances surrounding the signing of the Will. In her witness statement, she states that she would usually help the deceased in signing documents by ensuring he had a solid surface to use, putting on his glasses, and holding his hand for support.

[19] In relation to the Will, the second defendant states that she was present when the deceased gave Mr. Williams the instructions for the Will. The second defendant in cross-examination states that she assisted the deceased in the signing of the Will, by holding the middle of the forearm to steady the deceased’s hand for extra support to ensure that his hand would not shake.

[20] The second defendant also indicated in cross-examination that she knew the deceased to say that he wanted to leave his property for his grandchildren, Shantal and Carl. This, she said, was what he would say before he made the Will.

Francis Williams

[21] Francis Williams is an Attorney-at-law, and admitted in cross examination that he had not known the deceased prior to his taking instructions from him. He stated that he was first instructed by the deceased in 2022 to prepare a Power of Attorney for the second defendant to access the deceased’s account in the Grenada Co-Operative Bank. He recalled that in about a week after taking instructions for the Power of Attorney, he returned to the deceased’s home for its execution.

[22] Mr. Williams initially stated that it was about a week after this occasion that the deceased informed him of his desire to make a Will. Later on, during cross-examination however, Mr. Williams stated that it was during the occasion of the signing of the Power of Attorney that the deceased informed him of his intention to make a Will.

[23] When asked by counsel Ms. Taylor of the date of the Power of Attorney, compared with the date of the Will, Mr. Williams indicated that the Power of Attorney was

dated after the Will, on 18th August 2022. He stated however that the date of the Power of Attorney was incorrect.

- [24] Ms. Taylor further questioned Mr. Williams of the contents of the Power of Attorney, and inclusion of the power of the sale of the deceased's house by the second defendant. Mr. Williams responded that that clause "struck [him] as odd."
- [25] The court notes that although Mr. Williams said the Power of Attorney was limited to bank withdrawals, the Power of Attorney in fact was a general Power of Attorney with the authority to sell and mortgage the deceased's property.
- [26] Mr. Williams in cross examination by counsel, Ms. Taylor, admits to not asking why the deceased was bedridden. He further admits that he did not find it necessary to have the deceased examined by a medical practitioner, though he knew the deceased was advanced in age.
- [27] Mr. Williams said on completion of signing of the Power of Attorney, the deceased asked if he could prepare a Will for him. He said he took the instructions in writing to prepare the Will. He said he has searched and is unable to find the notepad on which he wrote the instructions.
- [28] With respect to the execution of the Will, Mr. Williams said the deceased, after telling him about his life, proceeded to sign the Will. He said the deceased was seated on a bed and the second defendant, Ann Emery, came in the room and brought a table for him to use to sign. He handed the deceased a pen and he proceeded to sign the Will with some difficulty, in his presence and Mr. George John's, his office attendant. Mr. Williams said there were three copies of the Will which were signed by himself, George John and the deceased. He gave Ann Emery one copy of the Will and he took the other two.
- [29] When asked in cross examination who was present at the execution of the Will, initially Mr. Williams said that the second defendant was not present. Counsel Ms. Taylor then informed him that it was the evidence of the second defendant that she was present during the signing of the Will. Mr Williams casually retorted "if she says she was there, she was there".

- [30] When asked of the manner of the signing of the Will by the deceased, he stated “no one physically touched [the deceased] when signing the Will... If Ann Emery said she held his arm, she would recall better than me.”

George John

- [31] The witness statement of Mr. George John was admitted into evidence, but he was not cross-examined by counsel for the claimant.
- [32] In his witness statement, George John stated that he accompanied Francis Williams to the deceased’s home on the day of the signing of the Will.
- [33] In light of the admission of the second defendant of her assistance to the deceased in the holding of his hand while signing the Will, the court rejects the evidence of Mr. George John which states that:

“The deceased signed the will without hesitation and without assistance in the presence of Mr. Williams and myself. He took a while but he eventually signed three copies of the will.”

- [34] The court also takes note of the familial relationship of George John and the second defendant, who were past schoolmates.

Expert Report – Dr. Doris Joseph

- [35] The non-recognition of familial associations as propounded in the evidence of the claimant is corroborated by the evidence of the court appointed expert in the proceedings, Dr. Doris Joseph.
- [36] Dr. Joseph was the doctor of the deceased from September 2009 to his death in September 2022. In her report, Dr. Joseph states that on 10th November 2021 she was called to see the deceased at the Princess Alice Hospital after he suffered a stroke.
- [37] Dr. Joseph states that although she did not conduct any mental state examination on the deceased, she noted that the deceased did not recognise her on her visit

to him in the Princess Alice Hospital in 2021. In response to questions posed to the expert by counsel for the defendants, she stated that she:

“realised that he seemed to have no idea who I was...”

[38] She states she was again called to see the deceased on 14th September 2022 when the deceased suffered a further stroke. She did not conduct a mental assessment as in her opinion, he was in fact moribund, in a semi- comatose state and unable to speak.

[39] It is Dr. Joseph’s opinion that after the deceased was discharged from hospital in 2021, he lacked the physical capacity to sign documents as his hands were virtually crippled from severe arthritis and as he was unable to see from his left eye. Dr. Joseph was also of the view that after his stroke in 2021, the deceased had suffered significant impairment of his brain function and therefore would have lacked mental capacity to sign and understand documents. She further pronounced that at 94 years old (the deceased’s age at the time of his first stroke), a full recovery from a stroke is very unlikely.

Legal Analysis

Whether the Will is valid

[40] **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...”

Testamentary capacity of the testator

[41] In **Aubrey Edwards v Rolston Rawlins**¹, Her Ladyship, Blenman J, as she then was, stated as follows:

¹ ANUHCv2005/0513

“In order for a will to be valid, the Court should be satisfied that the testatrix understood three matters: the testatrix must understand the broad effect of her wishes being carried out; the extent of the property she is disposing and the claims to which she ought to give effect. The testatrix must have testamentary capacity at the time when she executes the will. See *Banks v Goodfellow*. This requires the Court to be satisfied that the testatrix had the following – (a) The nature of the act and its effects; (b) The extent of the property of which he is disposing; (c) The claims to which he ought to give effect.

The legal burden of proof always lies upon the person seeking to propound a will to prove that the testatrix had the testamentary capacity at the time. If that person fails to do so, the will would not be admitted to probate. The testatrix must have known and approved of the contents of the will. The will must be that of a free and capable testatrix exercising her genuine free choice and not a result of undue influence by another.”

[42] Accordingly, the burden of proof of the testator’s testamentary capacity lies on the party setting up the Will². The burden is discharged prima facie by proof of capacity and due execution³. The evidential burden then shifts to the objector to raise a real doubt about capacity, and if so raised, the evidential burden shifts back to the party setting up the Will to establish capacity⁴.

[43] As the party setting up the Will, the burden of proof of the testator’s testamentary capacity and due execution lies on the defendants to satisfy the court that the purported instrument is the last Will of a free and capable Testator.

[44] The defendants are the main beneficiaries and residual legatees under the Will. It is the evidence that both defendants were involved in first retaining Mr. Williams to prepare the Will. The court from the evidence accepts that both defendants were present at the execution of the Will.

[45] Ms. Lawrence Griffith, counsel for the defendants in submissions argues that the deceased’s Will is in compliance with **Section 6** of the **Wills Act** and submits that the deceased was aware of the extent of his property.

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

³ *Barry v Butlin* (1838) 2 Moo PCC 480

⁴ *Re Key* (deceased) [2010] EWHC 408 (Ch)

- [46] Firstly, it is the evidence that Mr. Williams, an attorney-at-law of over twenty years of experience, who prepared the Will had never met the testator prior to the execution of the Will. Mr. Williams said he received a call from someone that he could not identify. He stated that he found the testator to be of advanced age lying in bed. Counsel Ms Taylor asked Mr. Williams in cross examination whether in his practice and legal research he did not see the need to ask pertinent questions to establish his testamentary capacity, he flippantly responded; ***“I didn’t come as doctor, I came as a lawyer”***.
- [47] Secondly the Mr. Williams gave contradictory evidence as to the sequence of events. The defendants both state that Mr. Williams was contacted for the preparation of the Will and he came to the house, took the instructions and then returned for the execution of the Will. However, Mr. Williams states that he was first instructed to prepare a power of attorney to allow the second defendant to access the bank account of the deceased.
- [48] The evidence is that the Will was prepared on 14th July 2022 and the Power of Attorney on the 18th August 2022. Mr. Williams, though he was adamant that he wrote instructions given to him by the deceased in his notepad, could not produce the notes of the interview, citing his lack of “organised filing systems”.
- [49] An attorney-at-law is under an obligation to maintain proper records when providing professional assistance in taking instructions in any involvement of any kind. Attorneys must balance their duty to act in the best interest of their clients and their duty to the court. Generally, communication between attorney and clients is private and confidential. However, counsel in this instance should first ensure that he has a proper, efficient office with a proper filing system to be able to produce notes of the relevant instructions and the interviews conducted in a case such as the extant one, in assessing the testamentary capacity of an advanced, in this case a 94 year old, bedridden gentleman whom the attorney was meeting for the very first time. This is to protect his profession and his client in the case of any potential dispute. Professional negligence includes the failure to properly record or maintain notes.

[50] Secondly, Mr. Williams states that the defendants were not present at the execution of the Will which is totally contrary to the sworn evidence of the defendants. The first defendant admits that her mother was present at the time of the instructions and execution of the Will. In addition, the first defendant was within earshot of what was happening in the room. It is the evidence of the second defendant, Ann Emery, that she assisted the testator in signing his name on the documents. The defendants' version of facts accepted by the court are totally contrary to the evidence of Mr. Francis Williams who has blatantly acted in breach of the Code of Ethics which mandates that an attorney at law must act honestly and competently within the bounds of the law. Mr. Williams by his action has attempted to mislead the court in breach of **Section 52 of the Legal Profession Code of Ethics**.

[51] The court finds that the circumstances under which the purported Will was executed are very strange and suspicious. The court is of the view that the defendants have failed to discharge the alleged presumption of a properly executed Will, having regard to the expert evidence of the physical and mental condition of the deceased at the period of the alleged execution of the Will. It is Dr. Joseph's evidence that the deceased's hands were crippled as a result of arthritis and that he was unable to sign. It is also the evidence of Ann Emery that she held the deceased's hand to sign the purported Will. The court is of the view that the signatures of the three copies of the Will are not the deceased's signature. Further the defendants were aware that the deceased previously engaged the services of lawyers of the firm of St Louis and St Louis but never contacted the firm for the preparation of the Will. They instead contacted Mr. Williams who had never dealt with the deceased before.

[52] In **Tyrrell v Painton and Another**⁵ it was held that the true rule is that wherever a will is prepared and executed under circumstances which raise the suspicion of the court, it ought not to be pronounced for unless the party propounding it adduces evidence which removes such suspicion and satisfies the court that the testator knew and approved the contents of the instrument.

⁵ [1894] P. 151

- [53] The court feels justified in a finding of the circumstances surrounding the purported Will as suspicious and takes judicial notice of the case of **Inche Noriah v Shaik Allie Bin Omar**⁶. **Inche Noriah** involved the execution of a deed of gift of property by an elderly illiterate woman in favour of her nephew who had responsibility for the management of all her affairs. Although the ruling of the Privy Council concerned the undue influence exhibited between parties to a deed of gift, of note is the holding of the Privy Council that where the relations between a donor and donee raise a presumption that the donee had influence over the donor, the court will set aside the gift unless there is proof of the exercise of independent, free will.
- [54] The court is of the view that the defendants as the sole beneficiaries under the Will orchestrated the terms of the Will and were assisted by Mr. Francis Williams. They were physically present and, as per their own evidence, Ann Emery assisted the deceased in signing the Will. The defendants have failed to establish satisfactory evidence of testamentary capacity, and of due execution in accordance with **Section 6** of the **Wills Act**.
- [55] At trial, counsel for the claimant drew the court's attention to the recent decision of the Court of Appeal of Trinidad and Tobago in **Christian Wilhelm Nothnagel v Nicholas Christian Nothnagel et al**⁷. The decision provides important guidance to attorneys in the preparation of Wills, especially for persons of advanced age, and is on all fours to the extant case before this court. The court finds it necessary to quote verbatim the statements of the court:

"173. ...Firstly, Hamel Smith had not interacted with the deceased literally for decades. He was her son's childhood and teenage friend and so would have been more familiar with her during those years decades ago. But he was not close to her for decades after and would not have been in a position to know of the various events that would have occurred surrounding her mental capacity. In the context of the finding of the court that the deceased appeared to have periods of lucidity it may well be that Hamel Smith would have interacted with the 92 year old during one of those periods. But how is a court to trust that this is the case simply on the word of the lawyer who prepared the Will without more. This court certainly cannot and ought not

⁶ [1929] AC 127

⁷ Civil Appeal No. P170 of 2023

to do so having regard to the evidence in this case. It was incumbent therefore on Hamel Smith to ensure that the deceased was examined by a medical practitioner before her instructions were taken.

174. Secondly, his tremendous experience ought to have vested him with the knowledge that when it came to elderly persons (in this case someone who was on her ninth decade) both common sense and good practice dictated that that she be examined for several reasons. Such actions would first of all provide protection for him both at a professional and personal level in relation to allegations of dishonesty. Secondly, it may have protected the interest of the beneficiary under the 2010 will and of fundamental importance it would have supported the fact that the testatrix had made her decision with full knowledge and approval. This is a step he ought to have taken whether he had reason to suspect that she was incapable or not. This is so as he was not aware of what her home circumstances were but he was aware that she in fact had other children who were not present with her at any of the meetings. His experience would have also told him that challenges to Wills often arise years after death in relation especially to elderly persons who have bequeathed their only property to one child to the exclusion of others.

175. Thirdly it was clear to him that the claimant who stood to benefit almost entirely from the 2010 will was present with his mother and had literally not left her side during the entire process. This ought to have put him on enquiry as to whether there may have been something that was being kept from him. He ought to have spoken to her in the absence of the claimant but he failed so to do. This would have provided a true opportunity to assess the competence of the deceased as far as he could in his experience.

176. Fourthly, there is no evidence that the deceased made him aware of the existence of a previous Will and its terms. Neither did he enquire. The existence of the previous Will was of course highly relevant having regard to the change that was now being made. This is a factor that may have assisted him in his assessment of her knowledge and approval.

177. Fifthly, there is no evidence in an event of the precise nature of any conversation (questions asked and answered) between Hamel Smith and deceased outside of the issue of the Will from which it may have been inferred that she was of sufficient capacity he having determined not to have her medically examined.

178. Of major concern to this court is the absence of notes from the interview with the deceased. It is the evidence of Hamel Smith that he destroyed the notes shortly after preparing the Will. Not only this, but it was also his evidence that he did not ask the deceased to sign those instructions. This appears to the court to shed wide suspicion on the knowledge and capacity of the deceased. It is professionally illogical that notes would be destroyed after the Will was prepared and executed as it is common knowledge that the instructions of a testatrix becomes invaluable should a challenge be made to the Will of that person after death. Once

again the existence of not only notes but of signed notes ensures that the practitioner and beneficiary are protected from unjust allegations of want of capacity. This is a basic principle of practice that is routed quite frankly in common sense. It is also a worthy practice in relation to the instructions for the preparation of deeds of conveyance. The court therefore would be failing in its duty if it did not frontally say that the absence of notes (and signed instructions) raises the level of suspicious circumstances to a much higher level.

179. The court found earlier on that Hamel Smith appeared to be of the view that when he transmitted the information about the separation of the back lot for the purpose of the Will and it having to be omitted from the Will, to the claimant he spoke to the deceased and explained to her. The court also understands his evidence to be inferentially that he explained this to the deceased on the day of execution before execution. Having regard to the court's finding on the mental capacity of the deceased, the court finds that even if this had in fact been done both by the claimant and the defendant it is more likely than not that the deceased would have been unable to understand and approve those instructions.

180. Additionally the court is of the view that the time spent with Hamel Smith on both occasions would not have afforded a sufficient opportunity for him to have made a reliable assessment of her capacity. In that regard the evidence is clear that she had good and bad moments. In that regard the claimant has not fulfilled the burden placed on him to prove that she was lucid at the material time."

[56] The Court of Appeal at paragraph 58 further stated that:

"A legal practitioner must act prudently in the conduct of his or her responsibilities. An important lawyer-function is to ensure that, as far as possible, a testator's free and unimpaired wishes should be given effect to. This requires that the process involved in the solemn act of preparation and execution of a will should be able to withstand scrutiny."⁸

[57] The court, applying the decision to the facts, finds that Mr. Francis Williams as an attorney-at-law practicing in excess of twenty years has failed in his professional responsibility in dealing with the deceased who was of advanced age. Mr. Williams had discussions about the preparation and execution of the Will in the presence of the beneficiaries which makes the Will invalid. Mr. Williams was under a duty to have had interaction with the testator privately in the absence of the caregivers in an effort to make a full assessment of the testator's mental capacity and his appreciation to understand the nature and effect of his testamentary

⁸ Civil Appeal No. P170 of 2023

dispositions. The involvement of Ms. Ann Emery in helping the testator sign both the Will and the Power of Attorney is even more egregious. Mr. Williams has demonstrably and blatantly failed to comply with the professional ethics required of the legal profession. His flippant response in cross examination leaves much to be desired and is an affront to his client and the court.

[58] Counsel for the claimant also relies on the case of **Melbourne Smith et al v Elridge Brown**⁹, wherein Her Ladyship, Blenman J, as she then was, accepted evidence of the deterioration of the mental acuity of the testatrix over a period of time before the date of the making of her Will and was satisfied that the testatrix lacked testamentary capacity on the date of the execution of the Will.

[59] Counsel for the claimant further argued that the purported Will ought to have observed the 'Golden Rule'¹⁰. In the case of a testator who is elderly and/or seriously ill and/or at the point of death, the making of a will by such a testator ought to be witnessed and approved by a medical practitioner who satisfies himself as to the capacity and understanding of the testator and makes a record of his examination and findings.

[60] The Golden Rule merely provides guidance and is not a substitute for the established test of capacity¹¹. Briggs J in **Richard Key and another v Jane Frances Key and another**¹² states that: "Compliance with the Golden Rule does not, of course, operate as a touchstone of the validity of a will, nor does non-compliance demonstrate its invalidity. Its purpose, as has repeatedly been emphasized, is to assist in the avoidance of disputes, or at least in the minimization of their scope. As the expert evidence in the present case confirms, persons with failing or impaired mental faculties may, for perfectly understandable reasons, seek to conceal what they regard as their embarrassing short comings from persons with whom they deal, so that a friend or professional person such as a solicitor may fail to detect defects in mental capacity which would be or become apparent to a trained and experienced medical examiner, to whom a

⁹ ANUHCv2004/0268

¹⁰ Re Simpson, Schaniel v Simpson (1977) 121 Sol Jo 224

¹¹ Cattermole v Prisk [2006] 1 FLR 693

¹² [2010] EWHC 408 (Ch)

proper description of the legal test for testamentary capacity had first been provided.”

- [61] The court is of the view that even if the Golden Rule is not mandatory, the circumstances of the evidence in this case required counsel to have engaged a medical doctor to do an assessment of the testator especially due to his unfamiliarity with the deceased. The court is satisfied that the medical evidence of Dr. Joseph demonstrates that the deceased lacked testamentary capacity to have understood the nature of his act and its effects.
- [62] It is the evidence of the defendants that the testator spoke of his dissatisfaction with his children but always mentioned his intention to leave his house for his grandchildren. It is the evidence that it was the deceased’s said granddaughter Shantal that the defendants informed of the deceased’s passing which further supports the affection that he had for the said granddaughter. The Will excluding his sole surviving child and grandchildren, compounds the evidence demonstrating his failure to recognise his close relatives and family.
- [63] It was held in **Charles Harwood v Maria Baker**¹³ that in order to constitute a sound disposing mind, a Testator must not only be able to understand that he is by his will giving the whole of his property to one object of his regard; but that he must also have capacity to comprehend the extent of his property, and the nature of the claims of others, whom by his will he is excluding from all participation in that property.
- [64] The defendants have failed to satisfy that, despite the testator’s expressions of his intention, he understood that by his Will he was giving the whole property to the defendants and excluding his granddaughter. The defendants, and especially Mr. Williams, have failed to establish that the testator had the capacity to comprehend the extent of his devise and the nature of the claims of others, whom by his Will he has excluded from all participation in his sole property.

¹³ (1840) 13 ER 117

Conclusion

[65] Given the above circumstances, the claimant's claim is allowed and the defendants' counterclaim is dismissed.

ORDER

[66] It is ordered and directed as follows:

- (1) Judgment is entered in favour of the claimant;
- (2) The purported last Will and Testament of Celestine Dominic Lockiby dated 14th July 2022 is invalid and a nullity;
- (3) The defendants, and any other person claiming under them, are not entitled to possession of the property owned by the estate of the deceased at Conference, St. Andrew;
- (4) That the defendants, and any other person claiming under them, do forthwith vacate the property situate at Conference, St. Andrew owned by the estate of the deceased;
- (5) The application for a grant of probate made by the first defendant is hereby set aside, and the defendants are restrained from making any application for any grant in the estate of the deceased; and
- (6) Agreed costs in the sum of \$6,000.00 to be paid by the defendants within fourteen (14) days of the court order made at the end of the trial on 25th March 2025.

Agnes Actie
High Court Judge

By the Court

Registrar