

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

GRENADA

CLAIM NO. GDAHCV2022/0127 (FORMERLY GDAHCV2019/0467)

BETWEEN:

**[1] KATHLEEN WARDALLY
[2] LESLYN SIMMS nee WARDALLY**

Claimants

and

BRENDA WARDALLY BEAUMONT

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Ruggles Ferguson KC for the Claimant

Mrs. Winnifred Duncan-Phillip and Ms. Thira Dumont for the Defendant

2024: May 28, 31;
June 4;
2025: January 20.

JUDGMENT

[1] **ACTIE, J.:** The parties are siblings and children of Bridget Wardally who died on 15th April 2018 (hereafter referred to as “the deceased”). This case concerns the validity of two Wills dated 4th November 2008 and 18th August 2014 respectively.

The 2008 Will

[2] The claimants were appointed executrixes of the Will dated 4th November 2008 (hereafter referred to as “the 2008 Will”). The Will devises the building at Canal Road, Grenville to the first claimant; Four Thousand One Hundred and Thirty-one Square Feet of land at Canal Road to the second claimant; and one acre of land at Richmond to Johnnie Calliste and Ronna Nathaniel.

The 2014 Will

- [3] The second Will dated 18th August 2014 (hereafter referred to as “the 2014 Will”) named the defendant who was an Attorney-at-Law and Rikki Wardally as the executors. The 2014 Will devises the upper floor of the building at Canal Road to the first claimant, the lower floor of the said building to the defendant, the remaining lands at Canal Road to the second claimant and the defendant, and lands at Dry River to Rona Nathaniel and Johnny Calliste. The 2014 Will was probated by the defendant on 2nd September 2019.

The claimants’ claim

- [4] The claimants contend that the 2008 Will is the Last Will and Testament of the deceased as it was duly executed and satisfies all the statutory requirements. The claimants seek a declaration that the 2014 Will is invalid as it was obtained under suspicious circumstances. The defendants also seek the revocation of the grant of probate and for the 2008 Will be admitted to probate.
- [5] The claimants list the following grounds which they assert give rise to suspicion surrounding the 2014 Will namely:
- (a) The 2014 Will was made after the deceased was diagnosed with dementia and was suffering from glaucoma with poor eyesight and unable to read.
 - (b) The 2014 Will was prepared at the behest of the defendant by an inexperienced secretary who previously worked for the defendant and was witnessed by a secretary at the defendant’s law office at the material time, both of whom the deceased was not acquainted with unlike the 2008 Will which was witnessed by persons known by the deceased over several decades.
 - (c) Unlike the 2008 Will, the 2014 Will made changes substantially to the benefit of the defendant.
 - (d) The changes are such that the deceased did not know or did not approve.
 - (e) The defendant had possession of the 2014 Will and kept the existence in shroud secrecy until after the burial of the deceased, contrary to how the

parties previously operated with regard to matters concerning the deceased.

- (f) The second executor had no knowledge of the existence of a previous Will.
- (g) The execution of the Will was not witnessed by a medical person.
- (h) The family name of the deceased is misspelt in the signature on the 2014 Will, a mistake the deceased never made.
- (i) The Will was not properly witnessed with the signature of one of the witnesses being on a separate page from the page on which the Will is printed, which page is not attached to the page containing the Will.

Defendant's case

- [6] The defendant denies the claimants' claim and contends that the 2008 Will was procured by duress or undue influence of the first claimant at the time when the deceased was physically and mentally weak after surgery for colon cancer. The defendant states that the 2014 Will reinstated the provisions the deceased's previous Will dated 7th May 2003 (hereafter referred to as "the 2003 Will") which provided similar benefits as the 2014 Will.
- [7] The defendant denies that there were any suspicious circumstances that render the 2014 Will invalid, and counterclaims for a declaration that the 2014 Will is the last will and testament of the deceased.

Legal analysis

- [8] Both parties challenge the respective wills on the grounds of undue influence and lack of capacity of the deceased.
- [9] The onus of proving that the will propounded was executed as required by law is on the party propounding it. The onus is a shifting one. It is for the person propounding the will to establish a prima facie case by proving due execution. If

the Will is not irrational and was not drawn by the person propounding it and benefiting under it, the onus is discharged¹.

[10] In **Aubrey Edwards v Rolston Rawlins**², Blenman J, as she then was, stated as follows:

“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.”

[11] In **Re Edwards (dec'd)**³ it was held by Lewison J that:

“...Undue influence means influence exercised by coercion, in the sense that the testator's will must be overborne, or by fraud... coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense...”

[12] The onus in respect of undue influence rests on the defence to establish directly or by proof of such facts and circumstances from which the court could properly infer undue influence⁴.

¹ Tristram & Coote's Probate Practice, 27th ed., Pg 637

² ANUHCv2005/0513

³ [2007] All ER (D) 46

⁴ *Re Brown Robinson v Sandiford* [1963] 1 WIR 305

- [13] It is basic law that a Will is ambulatory and takes effect after the death of the testator/testatrix. However, it is the evidence before this court that there was acrimony between the parties about the terms of the 2003 Will and the changes made in the 2008 Will, even prior to the testatrix's demise.
- [14] The defendant contends that the first claimant badgered and bombarded the deceased about her dissatisfaction of being left the upper floor of the deceased's house as her inheritance in the 2003 Will. The defendant denies that the deceased was mentally strong at the time of making the 2008 Will as she was recovering from colon cancer surgery. The defendant states that the 2008 Will was executed following continual mental pressure imposed by the first claimant on the deceased.
- [15] The defendant's contention is supported by evidence of George Williams, uncle of the parties and brother of the deceased. Mr Williams said that the terms of the 2003 Will were known to all including the claimants. Mr. Williams states that the 2008 Will was a secret to him until the deceased made the 2014 Will. He states that he is aware that the first claimant constantly pressured the deceased to change her 2003 Will.
- [16] In answer to this contention, it is no surprise that the first claimant denies the exertion of undue influence on the deceased. Nevertheless, the claimants do not support their position by producing evidence of either of the witnesses to the 2008 Will of the due execution of the Will by the deceased, nor by any other credible testimony.
- [17] It is the undisputed evidence that the deceased underwent a surgical procedure for colon cancer in September 2008, after which the first claimant cared for her from 2nd September 2008 to 31st March 2009.
- [18] The first claimant, Kathleen Wardally, in her witness statement states that the testatrix in March 2009 informed her that she made a mistake in the 2003 Will whereby the bottom floor was devised to the defendant. She states that up to that conversation she was not aware of the 2003 Will, neither was she aware that the testatrix made the 2008 Will.

- [19] It is the evidence of Judith De Gale, eldest sister of the parties, in her witness statement and at the trial that a meeting was convened at her home in the UK with all the siblings to discuss the 2008 Will having regard to the provisions in the 2003 Will. This meeting was solely to discuss the changes in in the 2008 Will which now devised the entire building at Canal Road, Grenville to the first claimant. It is also her evidence that there were discussions with the testatrix about the existence the 2008 Will. Judith De Gale further stated that she visited Grenada and was instructed by the testatrix to go to Tilman Thomas' office to change the 2008 Will.
- [20] Having heard the testimonies at trial, the court particularly accepts the evidence of George Williams, and notes that undue influence takes many forms, including coercion and/or duress⁵. It is the first claimant's evidence at the trial that she relocated from the United Kingdom to care for her mother who had a complicated surgical procedure. The first claimant stated that she remained with her mother 24/7 and never left her bedside. It is her evidence that her mother was in a critical state and spoke of feebleness throughout the recovery period. However, when asked about the execution of the Will which was executed during her mother's convalescence, she was unable to give a straightforward answer as to how the Will was prepared in light of her own evidence of constantly being at her mother's bedside.
- [21] A Will must be made on a testator's/testatrix's own volition and not the record of someone else. In **Boyse v Rossborough**⁶ the Lord Chancellor stated:

"In order to come to the conclusion that a will has been obtained by coercion it is not necessary to establish that actual violence has been used or even threatened. The conduct of a person in vigorous health towards one feeble in body, even though not unsound in mind, may be such as to excite terror and make him execute as his will an instrument which, if he had been free from such influence, he would not have executed. Imaginary terrors may have been created sufficient to deprive him of free agency. A will thus made may possibly be described as obtained by coercion."

⁵ ANUHCv2005/0513

⁶ [1843-60] All ER Rep 610

- [22] In the case of **Schomberg v Taylor**⁷, it was found that a testatrix in a very fragile mental and physical state after the death of her husband was subjected to unwanted and persistent pressure, and had been worn down to do what was suggested in order to have a quiet life.
- [23] Further, the Privy Council in **Inche Noriah v Shaik Allie Bin Omar**⁸ held 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 the donee establishes that it was the spontaneous act of the donor acting in circumstances which enabled him/her to exercise an independent will, and which justified the court in holding that it was the result of a free exercise of the donor's will.
- [24] The court applying the authorities to the facts finds that the testatrix was in a state of vulnerability when executing the 2008 Will, and that, given the coercive presence of the first claimant during that time of vulnerability, undue influence informed the execution of the 2008 Will. The 2008 Will was tailored to the first claimant's benefit of the entire building to the exclusion of the defendant from which the evidence suggests the existence of an acrimonious relationship between these two siblings for the ownership of the said building. The court is not satisfied that the 2008 Will was made on the testatrix's own volition and accordingly deems the 2008 Will as invalid.

The 2014 Will

- [25] The claimants' main contention as a suspicious circumstance of the 2014 Will is that the deceased did not, but ought to have observed the 'Golden Rule'. This can be easily dispelled.
- [26] The Golden Rule states that when a testator is elderly and infirm their Will should be witnessed and approved by a medical practitioner who satisfies themselves as to the capacity and understanding of the testator and who records their

⁷ [2013] EWHC 2269 (Ch)

⁸ [1929] AC 127

examination and findings⁹. This rule however merely provides guidance, and is not a substitute for the established tests of capacity and knowledge of approval¹⁰. The court so finds that the Golden Rule is not to be considered as a reason for suspicion.

- [27] In **Zorbas v Sidiropoulous (No 2)**¹¹, a matter before the Court of Appeal of New South Wales and relied on by our Court of Appeal in **Anne Marie Mac Leish & Anr v Avison Marryshow**¹², it was observed that:

“Medical evidence as to the medical condition of a deceased may of course be highly relevant, and may sometimes directly support or deny a capacity in the deceased to have understanding of the matters in the Banks v Goodfellow criteria. However, evidence of such understanding may come from non-expert witnesses.”

- [28] Counsel for the claimants also argued that the deceased was suffering from glaucoma, poor eye sight and inability to read properly at the time the 2014 Will was signed due to those ailments.
- [29] Nevertheless, explanation is given through the medical evidence of Dr. Baptiste that though the deceased suffered from glaucoma and bilateral cataracts, she was not diagnosed to have complete loss of vision. It is further the evidence of the defendant that the deceased wore bifocal glasses to counteract the effects of the glaucoma and bilateral cataracts. Consequently, the court accepts that the deceased had the ability to read properly at the time the 2014 Will was signed.
- [30] The burden is therefore on the defendant to prove the capacity of the deceased and her knowledge and approval of the contents of the 2014 Will.
- [31] On 29th June 2017 a medical report of the deceased by Dr. Hensley Baptiste in the form of a letter was produced (hereafter referred to as “the first medical report”). In this report, Dr. Baptiste stated that the deceased had a history of systolic hypertension, glaucoma and bilateral cataracts which caused significant

⁹ Re Simpson, Schaniel v Simpson (1977) 121 Sol Jo 224

¹⁰ Cattermole v Prisk [2006] 1 FLR 693

¹¹ [2009] NSWCA 197

¹² HCVAP2010/0012

loss of vision and impairment in her ability to perform normal functions on her own, and to take care of herself. Dr. Baptiste further stated that the deceased had been suffering from early dementia from the year 2013, which had compromised her capacity to manage her personal affairs, financial affairs and her ability to perform daily activities to a significant degree.

[32] There are two further reports of Dr. Hensley Baptiste. On 17th August 2018, Dr. Baptiste produces a letter (hereafter referred to as “the second medical report”) which states that five years previous to her passing, in the year 2013, the deceased was living with dementia.

[33] A further report of Dr. Hensley Baptiste dated 11th December 2018 (hereafter referred to as “the third medical report”) states that to the best of his knowledge, despite cognitive decline, the deceased manifested no signs of impairment in judgment and decision making capacity. He states further that the deceased remained communicative and was able to carry out most basic activities of daily living until she suffered a stroke in the year 2018. This latter assessment contradicts Dr. Baptiste’s assessment in 2017 where he stated that the deceased’s dementia compromised her ability to perform daily activities to a significant degree.

[34] In support of the lack of testamentary capacity, evidence is given by Ms. Vanessa Reid, friend of the daughter of the first claimant. Ms. Reid stated that when she visited Grenada in August 2014, she noticed that the deceased looked frail, unkempt and that there was a strong odour coming from her. Ms. Reid further stated that while interacting with the deceased, she was repeating herself and repeating questions she had already answered. The deceased’s speech was slurred and she appeared disoriented and confused, and she was not aware of the day of the week when asked, or the year.

[35] Witness for the claimants, Mr. Kenny Calder, cousin of the parties, averred that about the year 2013 he started to observe deterioration in the deceased’s mental state. He stated that the deceased’s long term memory seemed good as she

would recall things from when she was young, but that her short term memory seemed to be going.

[36] On the other hand, the defendant contends that the deceased was of sound mind and was fully aware of her actions when she gave instructions for the preparation of the 2014 Will.

[37] It is the defendant's case that Judith De Gale, daughter of the deceased, was directed by the deceased as to her desire to change her Will. The defendant avers that Ms. Pyeola Purcell, secretary of the legal office "Franco Chambers & Co.", took instructions from the deceased and returned to the deceased's home with the drafted 2014 Will. This Will was witnessed by the said Pyeola Purcell and Vashti Phillip who is an employee of the defendant whose office is located downstairs of the testatrix's house.

[38] On behalf of the defendant, and in support of the capacity of the deceased to validly make the 2014 Will, the defendant propounds and relies on the medical reports of Dr. Baptiste. The court cannot however accept the evidence contained in the third medical report of Dr. Baptiste dated 11th December 2018, after the death of the deceased. This medical report contradicts the evidence given by Dr. Baptiste in the first medical report.

[39] The evidence of Pyeola Purcell and Vashti Phillip, witnesses to the 2014 Will, is that when the deceased executed the 2014 Will she appeared to be of sound mind. This evidence however contradicts the evidence of Ms. Vanessa Reid, independent witness before the court, who visited the deceased in August 2014.

[40] The court, having heard the evidence, accepts Dr. Baptiste's evidence as contained in the first medical report and the second medical report that the deceased, from the year 2013, suffered from dementia which resulted in her inability to manage her personal affairs and to perform daily activities to a significant degree.

[41] As a result, the evidence of Dr. Baptiste challenges the evidence given by Ms. Yvette Toussaint, Ms. Pyeola Purcell and Ms. Vashti Phillip. Ms. Yvette Toussaint stated that she visited the deceased regularly, and that:

“on **all** my visits to the deceased, she was cognizant and communicative.”
(emphasis mine)

[42] This evidence, on a balance of probabilities, cannot be the accurate in light of the medical evidence given by Dr. Baptiste.

[43] The court having heard the totality of the evidence is of the view that the main intention of the 2014 Will was to revert to the devises made in the original 2003 Will. The court is not of the view that the defendant is a witness of truth when she stated that she had absolutely no knowledge of the making of the 2014 Will. The court finds that the involvement of the defendant and the then employee of the defendant in the production of the 2014 Will to make changes to benefit the defendant also create that suspicion.

[44] The burden of proof of the testator's knowledge and approval lies on the party setting up the Will¹³ to prove that the testator knew and approved of its contents¹⁴. The burden is discharged prima facie by proof of capacity and due execution¹⁵. Moreover, a person who is instrumental in preparing a Will under which he is a beneficiary has to satisfy the court on a balance of probabilities that the testator knew and approved the contents¹⁶. The court must be satisfied that the Will was made by the testator/testatrix on his/her own free will.

[45] The court therefore finds that the deceased lacked the requisite mental capacity, knowledge and approval to validly execute the 2014 Will. The court is also of the view that the 2014 Will was procured at the instance of the defendant to revert to the terms of the 2003 Will. Accordingly, the 2014 Will is deemed invalid.

¹³ Barry v Butlin (1838) 2 Moo PCC 480 at 482

¹⁴ Tyrrell v Painton [1894] P 151 at 157

¹⁵ Barry v Butlin (1838) 2 Moo PCC 480

¹⁶ (31st edn.) referred to in Wintle v Nye [1959] 1 WLR

[46] In conclusion, given the court's ruling as to the invalidity of the purported 2014 Will, it is unnecessary to discuss the further issues raised by the claimants with respect to the signatures of the deceased and the witnesses on the purported 2014 Will. The court only considers these issues for completeness.

Signature of the deceased

[47] The claimants contend that the family name of the deceased is misspelt in the signature on the 2014 Will. Counsel for the claimant argues that same is a suspicious circumstance.

[48] The defendant contends that the deceased's signature changed over the years from precise writing, due to her age and her failing sight. The defendant relies on the signatures of the 2003 Will, a 2010 agreement and an affidavit signed by the deceased in 2015.

[49] **In the Goods of Chalcraft**¹⁷ where "E.Chal" was signed as opposed to the testatrix's usual signature of "E.Chalcraft", it was held that where the signature of the deceased is not completed, the court will not necessarily refuse to pronounce in favour of a testamentary document.

[50] Although there must either be the name or some mark which has been acknowledged by the testator, the particular circumstances should be considered in deciding the effectiveness of the signature¹⁸. It must be decided whether the inference can be drawn that what was written was intended by the deceased to be the best that could be done by way of writing his or her own name¹⁹.

[51] It is evident that over time, the deceased's signature was written differently. In the affidavit the deceased signed in 2015, an "l" is missing from her signature. The court also accepts the evidence of both witnesses to the 2014 Will of the deceased's execution thereof.

¹⁷ (1948) P 222

¹⁸ In the Goods of Chalcraft (1948) P 222

¹⁹ In the Goods of Chalcraft (1948) P 222

- [52] Consequently, the court does not agree with the claimants that the misspelt surname of the deceased in the 2014 Will is a suspicious circumstance.

Signature of the Witnesses

- [53] The claimants further raise issue that the 2014 Will was not properly witnessed as the signature of one of the witnesses is on a separate page from the page on which the Will is printed.
- [54] In response, the defendant states that the name of a witness being on a separate page does not negate or have any relevance to the due execution of the deceased's 2014 Will as required under the Wills Act. The defendant contends further that both witnesses executed affidavits of attestation that they were both present when the Will was executed.

- [55] **Section 6 of the Wills Act CAP 340** states:

"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.** The testator's signature shall be so placed at or after or following or under or beside or opposite to the end of the will that it shall be apparent on the face of the will that the testator intended to give effect by such his or her signature to the writing signed as his or her will; and no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after or under or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will, whereupon no clause or paragraph or disposing part of the will is written above the signature, or by the circumstance that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written, to contain the signature. The enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature shall be operative to give effect to any

disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature was made.” (emphasis mine)

- [56] The claimant has not directed the court to any authority which prescribes that if the signature of an attesting witness is not on the same page as the testator’s signature, the Will is rendered invalid. The court is of the view that the Will conforms with the requirement of **Section 6** of the **Wills Act**.

Conclusion

- [57] Given the above circumstances, the court finds that the purported Wills of 2014 and 2008 are both invalid. The court consequently pronounces in favour of the Will dated 7th May 2003, the execution of which is uncontested by both parties.

ORDER

- [58] It is therefore ordered and declared as follows:
- (i) The claimants’ claim and the defendant’s counterclaim stand dismissed.
 - (ii) The Wills dated 4th November 2008 and 18th August 2014 are declared invalid.
 - (iii) The Grant of Probate dated 2nd September 2019 of the Will dated 18th August 2014 is hereby revoked and shall be struck out from the records of the Deeds and Land Registry.
 - (iv) Each party shall bear their own costs.

Agnes Actie
High Court Judge

By the Court

Registrar