

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

GRENADA

CLAIM NO. GDAHCV2023/0663 (formerly CLAIM NO. GDAHCV2019/0083)

BETWEEN:

HAYLEY MARTINEAU – DEANS

Claimant

and

**JOSEPH FINDLEY
SHANEAL FINDLEY**

Defendants

Before:

The Hon. Justice Raulston L.A Glasgow

High Court Judge

Appearances:

Mr. Ian Sandy for the Claimant

Ms. Lawrene Griffith for the Defendants

2024: June 20th
July 16th

JUDGMENT

Background

[1] The claimant ('Mrs. Martineau – Deans') is the niece of Sybil Veronica Bailey, late of the parish of St. Andrew's in the state of Grenada ('the deceased' and 'Mrs. Bailey'). Mrs. Bailey died a widow on 22nd August, 2017 at the age of 84, having made a will dated 10th September, 2015, the subject of this claim. In this 10th September, 2015 will, the defendants ('Mr. Joseph Findley' and 'Ms. Shaneal Findley') (collectively 'the Findleys') are the named executors of the deceased's estate, and the entirety of the deceased's estate has been left to them. Mrs. Martineau – Deans claims that this 10th September, 2015 will has disinherited several members of the deceased's immediate family.

[2] A caveat was filed in the deceased's estate on 29th August, 2017 by Mrs. Martineau – Deans, and thereafter on 6th November, 2017, she applied for a Grant of Letters of Administration in the deceased's estate. Mrs. Martineau – Deans pleads that when Mrs. Bailey executed the 10th September, 2015 will, she was 82 years old and her memory was not good. Mrs. Martineau – Deans also alleges that Mrs. Bailey was suffering from dementia and was therefore unable to understand the nature of the act, or the extent of the property of which she was disposing. Mrs. Martineau – Deans further charges that the will was procured through undue influence by the Findleys, and claims for the will to be pronounced against, an order that the deceased's estate be administered on intestacy and costs.

[3] The Findleys jointly deny Mrs. Martineau – Dean's claim that they took advantage of Mrs. Bailey. They aver that as far as they were aware, Mrs. Bailey was always of sound mind and understanding, and she executed her will on her own, without their knowledge and influence. The Findleys claim that Mrs. Bailey's will was attested in the prescribed manner and was fully explained to her by the official attestor. Based on this, the Findleys contend that Mrs. Bailey understood when she was undertaking when she executed the 10th September, 2015 will. The Findleys counterclaim and request that the will dated 10th September, 2015 be declared the last will of the deceased, Mr. Findley be permitted to apply for probate of the will and costs.

Issues for the Court's Determination

[4] The question for the court's determination is whether the will dated 10th September, 2015 is valid or ought to be pronounced against. As the will of 10th September, 2015 appears to have been validly executed in accordance with the statutory formalities stipulated in section 6 of the Wills Act¹, there is no qualm about the due execution of the will. The challenge mounted by Mrs. Martineau – Deans is 2 pronged, as she argues that the 10th September, 2015 will ought to be propounded against either on the basis of the deceased's lack of

¹ Cap 340 of the 2010 Revised Edition of the Laws of Grenada.

testamentary capacity or the alleged undue influence by the Findleys. Each of these claims will be examined hereunder.

Lack of Testamentary Capacity

[5] In determining the first basis of challenge, I am tasked with determining whether Mrs. Bailey had the requisite animus testandi to give instructions for and execute the 10th September, 2015 will. In order to possess the necessary animus testandi, it must be established that Mrs. Bailey had the mental capacity to make the will, knew and approved of its contents, exercised her genuine free choice in making the will, and did not make the will as a result of undue influence or fraud of another².

[6] As to the first limb, the basic rule is that a testator must be mentally competent and possess a sound disposing mind and memory³. To constitute a sound, disposing mind, the deceased must have had an understanding of the nature of the business in which she was engaged, the persons who were the objects of the bounty and the manner in which the property was to be distributed among them⁴. It is essential that no disorder of the mind should have poisoned the deceased's mind and no delusion should have influenced the will to bring about disposals which if the mind had been sound, would not have been made⁵.

[7] As stated in **Halsbury's Law of England**,

“Generally speaking, the law presumes capacity, and no evidence is required to prove the testator's sanity, if it is not impeached. **A will, rational on the face of it and shown to have been signed and attested in the manner prescribed by law is presumed in the absence of evidence to the contrary to have been made by a**

² Karen Nunez – Tesheira, *Non – Contentious Probate Practice in the English Speaking Caribbean*, (2nd edition, Caribbean Law Publishing Company Ltd) at 34.

³ *Banks v Goodfellow* [1870] 5 QB 549.

⁴ Karen Nunez – Tesheira, *Non – Contentious Probate Practice in the English Speaking Caribbean*, (2nd edition, Caribbean Law Publishing Company Ltd) at 35.

⁵ *Kostic v Chaplin* [2007] EWHC 2298 (Ch).

person of competent understanding. However, it is the duty of the executors or any other person setting up a will to show that it is the act of a competent testator, and therefore, **where any dispute or doubt exists as to the capacity of the testator, his testamentary capacity must be established and proved affirmatively.** The issue of capacity is one of fact. The burden of proof of sanity is considerably increased when it appears that the testator had been **subject to previous unsoundness of mind.** The justice or injustice of the disposition may throw show light upon the question of the testator's capacity...The court will not reject a will merely because it 'sounds to be folly', without evidence of insanity. **Parole or documentary evidence will be admitted to show that the will expresses the testator's deliberate intention, all statements of his whether oral or written preparatory to making his will, and his conduct generally in relation to it, are of importance to show whether in fact he was aware of the character of the act which he was performing.** A rational act rationally done affords strong evidence of his capacity to make a will.⁶ (bold emphasis mine)

[8] This legal position on the burden of proof has recently been confirmed in **Hughes v Pritchard and others**⁷, where Asplin LJ stated:

"It is also common ground that the burden of proof in relation to testamentary capacity is on the person propounding the will. **Where the will is duly executed and appears rational on its face, the court will presume capacity, in which case the evidential burden shifts to the objector to raise a real doubt as to capacity. If a real doubt is raised, the burden shifts back to the person propounding the will to establish capacity...**"⁸ (bold emphasis mine)

⁶ Halsbury's Law of England, Wills and Intestacy (Volume 103(2021) at 902.

⁷ [2022] Ch 339.

⁸ [2022] Ch 339 at 64.

[9] It has been recognized in **Sharp v Adam**⁹ that a judge's decision as to testamentary capacity is a finding of fact based on all the evidence.

Undue Influence

[10] The second issue for the court's determination is whether the Findleys exercised any undue influence over the deceased prior to or on the date that the deceased executed the will of 10th September, 2015. As stated in **Boyse v Rossborough**¹⁰, undue influence must be influence exercised in relation to the will itself and it must be of such a nature that the testator was not acting as a free agent, but was acting under undue control.

[11] Undue influence may be proven where a will is procured under suspicious circumstances, but these suspicious circumstances are not confined to cases where wills are prepared by or on the instructions of a person taking large benefits under it and extend to all cases in which exist circumstances that excite the suspicion of the court¹¹. One example which may excite the court's suspicion under the case law, is where property is left or dispositions are made to strangers which disinherit next of kin such as children as established in **Moonan v Moonan**¹². As stated by Wooding CJ in **Moonan**,

“it is a commonplace proposition of law that undue influence must not only be specifically alleged but affirmatively proved...the essence of undue influence is coercion...coercion inducing the making of the dispositions by the will under challenge.”

Claimant's Evidence

[12] On examining the 10th September, 2015 will, the dispositions appear to be rational and as aforesaid the will is duly executed. The presumption of testamentary capacity therefore arises. However, Mrs. Martineau – Deans has

⁹ [2006] WTLR 1059 at 95.

¹⁰ (1854) 3 De GM & G 817.

¹¹ Tyrell v Painto [1894] P 151.

¹² (1963) 7 WIR 420.

sought to challenge the deceased's mental capacity, which places the burden on her to raise a doubt on this issue. Turning to the evidence with respect to the challenge of the deceased's testamentary capacity, the evidence of Ms. Kathleen Forrester and Dr. Andy Bernard is instructive. The medical reports of Dr. Andy Bernard and Dr. Hensley J. Baptiste exhibited to Mrs. Martineau – Deans' evidence are equally as instructive.

Kathleen Forrester's evidence

[13] Ms. Forrester's evidence recounts that she is a career banker and manager of the Grenville branch of Republic Bank Grenada Limited (the Bank). She testifies that she knew Mrs. Bailey as a customer of the Bank, and observed her health over the years. Ms. Forrester recounts that as Mrs. Bailey got older, she observed a decline in her cognitive functions and physical appearance, as she attended the Bank in an unkempt manner. Sometime in 2014, Ms. Forrester recalls that Mrs. Bailey started to attend at the Bank in her nightgown, and sometimes without underwear.

[14] In August 2015, Ms. Forrester claims that Mr. Findley came to the Bank with a Power of Attorney dated 13th July, 2015, which gave him a power to administer Ms. Bailey's accounts at the Bank. Ms. Forrester elucidates that when a Power of Attorney is presented, the Bank's protocol requires that a separate Power of Attorney be executed in its own form by the customer. Given this protocol, Ms. Forrester went to Mrs. Bailey's residence accompanied by Ms. Cindy John to execute the Bank's standard form of Power of Attorney. On this visit, Ms. Forrester recalls that Mrs. Bailey told her that she neither knew Mr. Findley nor did she sign the 13th July, 2015 Power of Attorney. Ms. Forrester found that the deceased behaved in a mentally unstable manner, and this caused Ms. Forrester grave concern.

[15] Based on these events, Ms. Forrester states that the Bank requested that Mrs. Bailey be examined by 2 medical doctors – Dr. Andy Bernard and Dr. Hensley Baptiste. Both doctors produced reports which stipulated that Mrs. Bailey was

mentally and cognitively impaired. Given these reports, Ms. Forrester states that the Bank did not allow Mrs. Bailey to sign the Bank's Power of Attorney or allow anyone access to Mrs. Bailey's accounts at the Bank.

Dr. Andy Bernard's evidence

[16] Dr. Bernard recites that he is a qualified medical practitioner for the last 17 years. He recalls that in September 2015, the Bank requested that he examine Mrs. Bailey, who he knew as a resident of St. Andrew. Dr. Bernard indicates that he attended Mrs. Bailey's home on 4th September, 2015 and examined her. During this examination, Dr. Bernard found Mrs. Bailey to be oriented and healthy, and he conducted a Mini – Mental State Examination (MMSE) on Mrs. Bailey to assess her cognitive functioning.

[17] In accordance with the MMSE scale, Dr. Bernard found that Mrs. Bailey ranked in the severe category of mental impairment. Dr. Bernard produced a report of his examination of Mrs. Bailey and his findings dated 14th September, 2015. In relation to this claim, based on his examination of Mrs. Bailey on 4th September, 2015, Dr. Bernard formed the view that it is highly unlikely that Mrs. Bailey had the mental capacity to understand and give instructions for the preparation or execution of the will of 10th September, 2015.

Mrs. Martineau – Deans' evidence

[18] Mrs. Martineau – Deans explains that whenever she visited Grenada, she assisted in making arrangements for Mrs. Bailey's care during the latter part of her life. She alleges that she observed first-hand the rapid decline in Mrs. Bailey's health and cognitive functioning, which started around 2014. Mrs. Martineau – Deans recalls that when she visited Mrs. Bailey in January, 2017, she was surprised at her living conditions. This caused her to contact the Social Services Department which assisted Mrs. Martineau – Deans to have Mrs. Bailey transferred to the St. Martin Home for the Aged.

[19] Referencing Dr. Bernard's medical report dated 14th September, 2015, Mrs. Martineau – Deans points out that Dr. Bernard's examination took place approximately one week before the 10th September, 2015 will. Based on this fact, Mrs. Martineau – Deans concludes that Dr. Bernard's evidence provides compelling evidence that Mrs. Bailey did not possess the requisite mental capacity to execute the alleged last will.

[20] Dr. Baptiste's medical report was also referenced and exhibited to Mrs. Martineau – Deans evidence. In Dr. Baptiste's medical report dated 26th August, 2015, he certified that he served as Mrs. Bailey's personal physician for the past 5 years. Dr. Baptiste's medical report recites that he did not know Mrs. Bailey to have any neurological or psychiatric illnesses, and that he found her to be relatively well, mentally and physically. He further recited that in his opinion, Mrs. Bailey had no impairment in her decision-making capacity, and her general level of functioning was quite good, as she was able to perform most self-help activities of daily living, such as bathing, toileting, ambulating, dressing and eating.

[21] Dr. Baptiste concluded the report by saying that *"as a result of age related cognitive and physical limitations, I think that she would need assistance in taking care of her personal and financial affairs"*. Mrs. Martineau – Deans posits that even though Dr. Baptiste formed the opinion that Mrs. Bailey was not impaired in her decision-making capability and her general level of functioning was quite good, Dr. Baptiste recognized that the deceased experienced age related cognitive and physical limitations.

Evidence for the Findleys'

Mr. Findley's evidence

[22] Turning to the evidence for the Findleys, Mr. Findley is the 1st named executor of the 2015 will, and the 2nd defendant, Ms. Findley, is his daughter. His evidence is that he knew Mrs. Bailey for over 40 years, as he became familiar

with her by visiting her and her late husband with his father to do repairs on their furniture. Mr. Findley indicates that he does not know Mrs. Martineau – Deans, having only seen her on one occasion prior to Mrs. Bailey’s death. Mr. Findley also states that he does not know the relationship between Mrs. Martineau – Deans and Mrs. Bailey and avers that Mrs. Martineau – Deans has not established the connection which shows that she will benefit as a beneficiary of the deceased on intestacy.

[23] Mr. Findley’s further evidence is that after Mrs. Bailey’s husband died, he assisted the deceased with gardening, and giving her rides to the Bank and the grocery shop. He professes that in the 1990s, he observed a young man named Kellon Thomas residing with Mrs. Bailey. They did not get along, as Mr. Findley observed that Mr. Thomas displayed dislike towards him on the occasions that he assisted Mrs. Bailey by driving her around, managing her land and certain affairs. Mr. Findley alleges that Mr. Thomas is an employee of the Bank, and that Mr. Thomas and another party received 2 parcels of land from Mrs. Bailey by Deed of Gift in 2012.

[24] Mr. Findley avers that Mrs. Bailey conducted all her affairs by herself, as she was of sound mind, memory and understanding. Mr. Findley maintains that he was not aware that Mrs. Bailey made a will, as he was only contacted by the deceased’s attorneys at Lyons – John & Co. after she died. He insists that the will was prepared by Mrs. Bailey’s attorneys, and that he did not participate or influence the making of the will.

[25] Mr. Findley states that in 2015, Mrs. Bailey wanted him to assist with her banking needs. He points out that Mr. Thomas was still employed at the Bank, and when Mr. Thomas became aware of Mrs. Bailey’s intentions, the Bank requested medical reports to determine Mrs. Bailey’s state of mind. Mr. Findley states that he attempted to have the doctors who assessed Mrs. Bailey to provide witness statements, but this proved futile. Mr. Findley indicates that during the latter part of Mrs. Bailey’s life, when she was ailing, he assisted her by purchasing food from his own income as he had no access to her bank accounts, and received no assistance from Mrs. Martineau – Deans.

Ms. Findley's evidence

[26] The 2nd defendant, Ms. Findley, is the alternate named executor in the 2015 will, and her succinct statement is that she knew Mrs. Bailey, who she met through her father Mr. Findley. Ms. Findley indicates that she visited Mrs. Bailey with her father and she appeared to be well focused and managed her affairs. Ms. Findley claims that she did not know Mrs. Bailey to be suffering from any illnesses. After Mrs. Bailey's death, Ms. Findley asserts that she was advised by Mrs. Bailey's attorneys that Mrs. Bailey made a will naming her an executor. Ms. Findley concludes that she is not able to speak about Mrs. Bailey's state of mind when she executed the will.

DISCUSSION AND ANALYSIS

Testamentary Capacity

[27] In analysing whether the presumption of the deceased's testamentary capacity has been impeached, I have found that a query arises in that regard. Each of the witnesses for Mrs. Martineau – Deans indicate that they witnessed the deceased's cognitive decline in her later years. Ms. Forrester's, Dr. Bernard's and Dr. Baptiste's medical reports in particular are accepted as independent evidence, as they are unconcerned specifically with the deceased's instructions and execution of the will. Given the contemporaneous nature of their evidence in relation to the events which occurred in September, 2015, it gives credence to the deceased's lack of mental faculties during her later years and more importantly prior to the execution of the 10th September, 2015 will.

[28] Even taking Dr. Baptiste's evidence in account, which appears contradictory in some ways, it cannot be said that his assessment is without merit. The apparent contradictions in Dr. Baptiste's findings can easily be explained since, for instance, he did not indicate that he performed an MMSE or any other specific medical assessment of the deceased's mental capabilities. In any event, Dr. Baptiste also found that the deceased was impaired to the extent of being demonstrably limited in her capacity to handle her affairs.

[29] Dr. Bernard conducted a specific medical assessment of the deceased's mental capacity, and found that the deceased was experiencing severe challenges in her mental functioning. Dr. Baptiste's general assessment coupled with Dr. Bernard's more scientific assessment of the deceased together lend to the finding that the deceased had challenges to her mental faculties in the year of 2015 prior to the execution of the will. The combination of this evidence suggests that the mental capacity of the deceased was impaired, thereby rebutting the presumption that she possessed the requisite testamentary capacity.

[30] Where there is a real doubt as to the testator's capacity, the burden of proof falls on the person seeking to prove capacity¹³. As stated in **Smith v Tebbitt**¹⁴, all diagnoses are a matter of degree, and persons suffering from any one of such diagnoses may still be competent to make a will. Thus, once incapacity has been established, the burden lies on the party propounding the will to show that it was made after recovery or during a lucid interval¹⁵.

[31] In assessing the Findleys' assertion that the deceased had the relevant mental capacity to give instructions and execute the will, it cannot be said on their evidence that they have discharged the burden of proving that the deceased had the mental capacity at the material time. By way of example, the Findleys have not challenged the evidence of the medical doctors by disproving or invalidating that evidence in any material way.

[32] The Findleys have equally, and I must say strikingly, presented no evidence from anyone who was actually present when the deceased gave instructions for the preparation of the will, or on the date of the will's execution who could testify to the deceased's mental capacity on the material dates. In their pleadings, the Findleys say that the deceased's will was "explained to her by the official attester, which she understood and the will was thereafter signed". The Findleys do not indicate how they came to know this crucial information, and I therefore find their assertions to be quite self – serving. On the whole, they have not said

¹³ In Re Key deceased [2010] 1 WLR 2020.

¹⁴ (1867) LR 1 P & D 398 at 402.

¹⁵ Grooms v Thomas (1829) 2 Hag Ecc 433.

how they came to the conclusion that the deceased possessed the relevant mental capacity.

[33] Cogent evidence is necessary to prove mental capacity when a challenge has been raised. In **Carr and others v Beaven**¹⁶, even where the deceased had suffered strokes which affected his mental ability, and he was diagnosed with suffering from mild dementia, Floyd J found that the deceased possessed the necessary testamentary capacity when he gave instructions for and executed the will. This conclusion was based on the evidence that the solicitor who prepared the will sought the opinion of a medical practitioner who initially diagnosed the deceased with dementia, the deceased's ability to give clear and rational instructions to the solicitor, and the opinion of the medical experts called at trial. Floyd J recounted:

“Of course, the final decision on the issue of testamentary capacity is for the court, not the experts. Nevertheless, one thing emerges very clearly from the reports of these experts: that a diagnosis of mild or even moderate dementia is not of itself an obstacle to satisfying the requirements of testamentary capacity...A testator may lack testamentary capacity on a particular day, but may possess it on a particular day any months later. What is crucial is the condition of the testator on the day he gives his instructions and the day he makes the will.”¹⁷

[34] As aforesaid, there is no evidence given by anyone at all to demonstrate that, as was found by Floyd J in **Carr**, on the particular days, the deceased had the mental capacity to give instructions for or to execute the September 2015 will. As shown in **Carr**, even where forms of dementia presents, there can be a finding of testamentary capacity by the court if there is sufficient evidence to that effect.

¹⁶ [2008] EWHC 2582 (Ch).

¹⁷ [2008] EWHC 2582 (Ch) at 81.

[35] This evidential failing is further buttressed by the fact that the 10th September 2015 will recites that it was drawn and prepared by the Law Office of Lyons – John & Co, the present counsel for the defendants. Even further, no evidence has been presented by the attorney who received instructions for the preparation of the will, and the instructions themselves have not been placed before the court. Evidence from the attorney who received instructions and prepared the will may have assisted the court in making its determination¹⁸. All of the aforementioned are parties who can speak to the state of mind of the deceased at the time of giving instructions and/or executing the will.

[36] As found in **Parker v Felgate**¹⁹, a will shall be deemed valid if a testator gives instructions to a solicitor at a time when the testator has the requisite mental capacity, and the solicitor prepares the will based on those instructions, even where it is found that the deceased lacked the mental capacity on the date of execution. This is even so where the testator is only able to understand that he is executing a will for which he gave instructions but is no longer capable of understanding the instructions or the will itself. The lack of evidence from the Findleys on all these matters is a fundamental flaw in their defence, which is fatal both to the claims made on their defence and to the reliefs sought on their counterclaim.

Undue Influence

[37] On this issue, I found that Mrs. Martineau – Deans did not lead sufficient evidence on this point. The Findleys deny that they were involved with the deceased's instructions to her solicitor to prepare the will, or that they were involved in any way with the execution of the will. Both of the Findleys assert that they were only informed that the deceased made a will after the deceased's death. Mrs. Martineau – Deans was not able to establish any form of coercion by the Findleys on the deceased, and her counsel, properly in my view, did not pursue this issue at the trial of this matter on 20th June, 2024.

¹⁸ Perrins v Holland [2011] Ch 270.

¹⁹ (1883) 8 P&D 171.

Conclusion

[38] I have found that Mrs. Martineau – Deans has proven on a balance of probabilities that the deceased lacked the relevant mental capacity to give instructions for the preparation of the will of 10th September, 2015. The burden then shifted to the Findleys to prove that the deceased did in fact have the capacity to give instructions. They have presented no evidence to support a finding that the deceased did in fact have the capacity to give instructions to prepare the will of 10th September, 2015, which is fatal to the upholding and propounding of the will.

[39] They have also failed to present any evidence that notwithstanding the deceased's general mental incapacity, that at the time of giving instructions, the deceased had the requisite mental capacity or a lucid interval to make disposal of her properties. Mr. Findley's allegation that Mr. Thomas caused the Bank to pursue the medical reports also does not assist the Findley's case, since he did not present any evidence of any collusion or conspiracy involving the Bank and the doctors.

[40] On the issue of alleged undue influence, the coercion and suspicious circumstances required do not present themselves, and as such Mrs. Martineau - Dean's claim on this point fails. Based on the foregoing matters, I have found that Mrs. Martineau – Deans is partially entitled to the relief sought. In that regard, she succeeds on the part of her claim that the deceased lacked the requisite mental capacity at the time of making the will. I therefore propound against the deceased's will of 10th September, 2015, and order that the deceased's estate be administered on intestacy.

[41] On the issue of costs, I award prescribed costs, valuing the claim at \$50,000.00 in accordance with rule 65.5(2)(d) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2023 (CPR 2023), as this claim is not for a monetary sum. In

accordance with the prescribed costs scale, costs are assessed in the sum of \$10,000.00 as the matter was concluded at trial. I will however exercise my discretion to vary the amount of costs awardable, utilizing rules 64.6 (4) and (5) of CPR 2023, and award costs to Mrs. Martineau – Deans in the sum of \$2,000.00, since she is partially successful on her claim.

Conclusion

[42] Mrs. Martineau – Deans has been partially successful and judgment is entered in her favour in that regard. The Findleys' counterclaim is dismissed in its entirety. It is ordered as follows:

- (1) Sybil Veronica Bailey's will of 10th September, 2015 is propounded against on the basis of the court's finding that she lacked testamentary capacity at the time of the making and execution of the will;
- (2) The estate of the Sybil Veronica Bailey is to be administered on intestacy; and
- (3) Costs are awarded to Mrs. Martineau – Deans in the sum of \$2,000.00

Raulston L.A. Glasgow

High Court Judge

By the Court

Registrar