

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

**GRENADA
CLAIM NO. GDA HCV2013/0260**

IN THE MATTER OF THE ESTATE OF VENROLE BATSON, DECEASED

and

IN THE MATTER OF THE CIVIL PROCEDURE RULES 2000 PART 68 THEREOF

and

**IN THE MATTER OF AN APPLICATION BY THE CLAIMANTS HEREIN AS
BENEFICIARIES UNDER THE WILL OF VENROLE BATSON, DECEASED, FOR AN
ORDER FOR THE GRANT OF PROBATE OF THE WILL DATED 30TH DAY OF MAY
2010 AS THE LAST WILL AND TESTAMENT OF THE DECEASED**

BETWEEN:

**[1] NELLISON HENRY
[2] JOY HENRY
[3] DANNY BATSON**

Claimants

and

GRESHAM URIAH BATSON

Defendant

Before:

The Hon. Mde Justice Agnes Actie

Appearances:

Mr. Alban John with Ms. Vern Ashby for the claimants
Mr. Ruggles Ferguson for the defendant

2021: March 2;
March 31.

JUDGMENT

- [1] **ACTIE, J.:** The main issue in this case concerns the validity of two wills of the deceased, Venrole Batson, dated April 1st 2010 and May 30th, 2010, respectively.

Background

- [2] The deceased, Venrole Batson, during his lifetime lived at Morne Jaloux, St George, Grenada with his son Danny Batson, the third claimant and Nellison Henry, his son's uncle, the first claimant. Joy Henry, the second claimant, is the mother of Danny Batson. The defendant, Gresham Uriah Batson, is the brother of the deceased.
- [3] On April 1, 2010, Venrole Batson made a will naming the claimants and the defendant as beneficiaries. One month later, on May 30th, 2010, Venrole made a subsequent will removing Gresham Uriah Batson (the defendant) as a beneficiary. Venrole Batson died on 16th April 2013. The defendant filed a caveat on May 22nd, 2013 to prevent the probate of the May 30th 2010 will.

The Claim

- [4] The claimants in a Fixed Date Claim filed on July 8th, 2013 seek an order of the court to declare that the will dated April 1st 2010 is a pretend will and not the true will of Venrole Batson in that the devise in clause 4(iii) to the defendant, the brother of the deceased was made under the influence and upon the urgings of the defendant. The claimants state that the true last will and testament of the deceased is the May 30th, 2010 will and they are entitled to an order pronouncing in favour of the said will and for a grant of probate in solemn form.
- [5] The claimants contend:
- (i) that the deceased had the requisite testamentary capacity to execute the last will and testament dated 30th May 2010 and said will is the true and final will of the deceased ("the May 30, 2010

will”).

- (ii) The signature affixed to the May 30, 2010 will is the true signature of the deceased.
- (iii) The May 30, 2010 will satisfies all the legal requirements and formalities necessary under the Wills Act Cap. 340 of the 2010 Continuous Revised Edition of the Laws of Grenada, and the common law and is therefore valid in law.
- (iv) The May 30, 2010 will be being a valid will therefore superseded and revoked any prior will made by the deceased.
- (v) The will dated 1st April 2010 (“the April 1, 2010 will”), even if validly made, has no effect in law as it was revoked by the true last will and testament of the deceased made on May 30, 2010.

The Defence and counterclaim

- [6] The Defendant contends that he did not exercise or use undue influence on the deceased regarding the making of the April 1st, 2010 will and asserts that the will made at the Law Office of Danny Williams and Co., is the valid last will and testament of the deceased. The defendant alleges that the deceased did not have the requisite mental capacity to make the May 30th 2010 will and did not have knowledge nor approved of the contents of the said will, more particularly the removal of the devise to him.
- [7] The defendant further alleges that the May 30th, 2010 will was procured under suspicious circumstances. The defendant contends that the signature on the May 2010 will was not the signature of the deceased. The defendant states he had a very good relationship with his deceased brother and therefore the deceased would not have excluded him from his will. The defendant in his counterclaim

seeks a declaratory order that the will of the April 1st 2010 is the last will and testament of the deceased and not the will of the May 30th, 2010.

Issues

- [8] The following issues are to be determined namely:
- (i) Whether the deceased had the requisite mental or testamentary capacity to execute the will and testament dated May 30, 2010.
 - (ii) Whether the signature on the will dated May 30, 2010 is the true signature of the deceased.
 - (iii) Whether the will dated May 30, 2010 revoked the April 1, 2010 as the true and last will and testament of the deceased.
- [9] The evidence in relation to the deceased's testamentary capacity is provided in three medical reports namely, Dr. Sonia Johnson, Dr. Evelyn Spencer and Dr. Dirk Burkhardt.
- [10] Dr. Sonia Johnson both in her report dated September 30th 2013 and in cross-examination at the trial states that the deceased, Mr. Batson, was well known to her and had regularly attended to him as her patient since 2009. Dr. Johnson said she attended to Mr. Batson both at the Morne Jaloux clinic and at his home. She said that Mr. Batson suffered a stroke sometime in February/March 2010 and was treated at the General Hospital. Dr. Johnson described Mr. Batson as being independent and of sound mind despite his minor ailments. Dr. Johnson states that Mr. Batson attended the Morne Jaloux Medical Station periodically for medical check-ups and various minor ailments between the period from 2010 to 2012 and was of sound mind throughout all his visits and vocalized his medical concerns. In 2012, the team from the medical station made the first home visit where it was noted that Mr. Batson's speech was declining. After May 2012, Mr.

Batson's communication decreased and eventually stopped completely, and his mobility decreased.

- [11] Dr. Evelyn Spencer MD, who examined the deceased at the insistence of the defendant, wrote a report dated May 3rd 2020. In the report Dr. Spencer described the deceased as being fiercely independent. The report states that the deceased speech was disjointed which left him unable to find the correct term or phrase during conversation. Dr. Spencer formed the impression that the patient suffered from moderately- severe dementia of vascular origin and also suffered from short term memory loss. However, Dr. Spencer who prepared the report on behalf of the defendant was not called as a witness at the trial.
- [12] Dr. Dirk Burkhardt, a trained Psychiatrist, never physically interacted with the deceased but provided a medical report dated April 24th 2015. His report is based on the medical reports of Dr. Sonia Johnson and Dr. Evelyn Spencer and three witness statements from Jacinta Young, Sonia Parke and Anthony Parke who witnessed the signing of the May 30, 2010 will.
- [13] Dr. Burkhardt having examined Dr. Spencer's report, in relation to the impression that the patient suffered from moderately- severe dementia of vascular origin and short-term memory loss, said that Dementia is a clinical diagnosis, the most common dementias being Alzheimer's and vascular dementia. Dr. Burkhardt said there is no clinical test that can confirm either of the two diagnoses in the proceeding. In his evidence under cross-examination Dr. Burkhardt also noted that Dr. Spencer is not a board-certified Psychiatrist. Dr. Burkhardt said that only the time course of the disease can determine the diagnosis. However, certain findings can support the diagnosis of Vascular dementia like a CT Scan which is not available. Dr. Burkhardt states that patients with Vascular dementia even in the late stages experience so called "lucid moments" when they are fully oriented and are able to make a valid will. Dr. Burkhardt surmised that all the witnesses indicated that the deceased was strong willed, alert and clear, and there was not

any evidence to indicate that the deceased was not mentally competent to make his will on May 30, 2010. Dr. Burkhardt further stated that there was no clear indication or medical evidence from a neurological point of view to support the diagnosis of dementia. Dr Burkhardt states that even if the deceased was suffering from Vascular dementia as suggested by Dr Spencer, he was in a lucid interval at the time and from a psychiatric –neurological point of view was fully capable to make his will on May 30th 2010.

[14] The witness, Ms. Sonia Parke, a teacher by profession and neighbour of the deceased, recalled signing the will at the deceased's residence. She said she was aware that the deceased had a previous will. She said that the deceased informed her that his brother (the defendant), brought him to a lawyer and he made a will giving the brother four acres of land. Ms. Parke said that the deceased informed her that he wanted to change the will and asked her if she could assist him in finding someone to help him make a new will as he wanted to remove his brother from the will. Ms. Parke said she made contact with Mr. Anthony Parke who promised to talk to Mr. Batson to obtain the instructions. Ms. Parke states that as far as she was aware no one pressured or influenced the deceased to make a new will. She said that she recalled signing the will together with the other witnesses at the deceased residence.

[15] Mr. Anthony Parke, former Principal and Justice of the Peace, said that he was well acquainted with the deceased. He said that received information that Mr. Batson wanted to see him. He said he visited Mr. Batson at his home and described him as being mentally alert and able to speak. Mr. Parke said that Mr. Batson asked him to formulate a will for him. Mr. Batson informed him that his brother had taken him to Danny Williams' law firm to make a will leaving him four acres of land.. Mr. Parke said that Mr. Batson said he would "outsmart him (the brother)" in preparing another will. Mr. Parke said he took the instructions and returned to Mr. Batson's residence about 3 weeks later on May 30th, 2010 together with the witnesses to execute the will.

- [16] The defendant, Gresham Uriah Batson, said that he and his brother (the deceased) shared a close relationship. He states that he visited his brother regularly and also employed a caretaker to care for him. He said that on April 1, 2010, the deceased asked him to take him to Danny Williams Law chambers. He said that his brother entered the office and when he emerged from office showed him an unsigned copy of the will. He said he did not discuss anything with his brother about the contents of the will prior to him making the will. He states that by May 30th 2010 his brother(the deceased) was completely out of it and was completely senile at that point. Further, the defendant states that even if the deceased signed May 30, 2010 will, he would not have known or understood what he was doing given his state of senility.

Law and Analysis

Whether the deceased had the requisite testamentary capacity to execute the will and testament dated May 30, 2010

- [17] In the court of appeal case of **Anne-Marie Mac Leish Lynette Rooker v Avison Albert Marryshow**¹, Her Ladyship, Pereira JA, as she then was, cited the following passage from **Den v Joseph Vancleve**²:

"The testator must, in the language of the law, be possessed of sound and disposing mind and memory. **He must have a memory; but his memory may be very imperfect; it may be greatly impaired by age or disease; he may not be able at all times to recollect the names, the persons or the families of those with whom he has been intimately acquainted...and yet his understanding may be sufficiently sound for many of the ordinary transactions of life. He may not have sufficient strength of memory and vigour of intellect to make and to digest all parts of a contract, and yet be competent to direct the distribution of his property by will....**The question is not so much what was the degree of memory possessed by the testator? as this: Had he a disposing memory? was he capable of recollecting the property he was about to bequeath; the manner of distributing it; and the objects of his bounty? To sum up the whole in the most simple and intelligible form, were his mind and memory sufficiently sound to enable him to know and understand the business in which he was engaged at the time he

¹ GDAHCVAP2010/012 at para 6.

² (1819) 2 Southard 589.

executed his will?"

- [18] In **Aubrey Edwards v Rolston Rawlins**³, Her Ladyship, 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."

- [19] In my view the defendant has not established any suspicious circumstances that encourages the court to accept that the deceased lacked the requisite testamentary capacity at the time of executing the May 30, 2010 will.

- [20] The evidence before the court suggests that the deceased was of strong, clear mind in 2010 when he executed both wills. There were a few inconsistencies in the evidence of the Danny Batson, son of the deceased and Nellison Henry. Nellison Henry's evidence contradicts the time at which the witnesses stated that there were at Mr. Batson's home to sign the will. Mr. Danny Batson's evidence of the deceased speech impairment towards the latter part of the deceased life conflicted with that of Dr. Johnson. However, none of the claimants' witnesses' evidence concluded that the deceased lacked the requisite testamentary capacity at the material period between April 1 and May 30, 2010.

³ *Edwards v Rawlins* ANUHPB 2005/0513 at paras. 34-35.

- [21] The above authorities have stated that on execution of a will the Testator must be capable of understanding the nature and effect of his wishes and dispositions in his will. In this case, the totality of the evidence suggests that, even though the deceased suffered from short term memory loss and dementia as stated by Dr. Spencer, he may have been able to have sufficient testamentary capacity to remember his dispositions concerning his property and to fully understand the purpose and effect of him making and executing a will. It must also be noted that the diagnosis of the deceased of moderate to severe dementia were based on impressions and assumptions of the deceased during his examination. Dr. Spencer also noted that the disease of dementia is progressive which means it is gradual in its onset. Therefore, there was no finding by him that the deceased “completely out of it” as the defendant suggests.

Whether the signature on the will dated May 30th 2010 is the true signature of the deceased

- [22] Another issue raised in these proceedings is whether the will dated May 30th 2010 was properly executed. It is trite law that where a will has been properly attested and executed on its face pursuant to the Wills Act, it is presumed to be valid.

- [23] In the United Kingdom Court of Appeal case in **Sherrington & Ors. v Sherrington**⁴ Lord Justice Peter Gibson made the following observation:

“To similar effect was Lord Penzance in *Wright v Rogers* (1869) LR 1 PD 678 at p. 682. In this case the survivor of the attesting witnesses of a will, which was signed by the testator and the witnesses at the foot of an attestation clause, gave evidence a year later that the will was not signed by him in the presence of the testator. Lord Penzance said at p. 682 that the question was whether the court was able to rely on the witness's memory.

He continued:

“The Court ought to have in all cases the strongest evidence before it believes that a will, with a perfect attestation clause, and signed

⁴ [2005] EWCA Civ 326 at para. 41.

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 other way, there is no footing for the Court to affirm that the will was duly executed.” (Bold emphasis mine)

[24] In the case at bar, the defence claims that the signature on May 30th 2010 will is not that of the deceased. One of the attesting witnesses, Ms. Sonia Parke, states that the deceased who was her neighbour requested her assistance in obtaining help to prepare another will. The will was signed by the deceased and witnesses, Ms. Jacinta Young and Mr. Parke and herself in the presence of each other.

[25] A comparison between the signatures of the deceased in the April 1st, 2010 will and May 30th, 2010 will, reveals on its face, a slight difference. However, while there may be reasons to explain this occurrence, it is not for the court to speculate which signature is the true signature of the deceased. There is no compelling evidence by the defendant to rebut this presumption of due execution of the May 30th, 2010 will. The only rival complaint is that of the defendant who factually asserts that the signature in the May 30th, 2010 will is not that of the deceased. The defendant did not lead any evidence to support his assertion. This assertion, without more, is not sufficient to rebut the presumption that the May 30th 2010 will was not duly executed by the deceased.

Whether the will dated May 30, 2010 revoked the April 1, 2010 as the last will and testament of the deceased.

[26] **Section 15 of the Wills Act** states that a will can be revoked by another will or codicil:

15. In what cases wills revoked

“No will or codicil or any part thereof shall be revoked otherwise than as aforesaid, **or by another will or codicil executed in manner hereinbefore required**, or by some writing declaring an intention to revoke the same and executed in the same manner in which a will is

hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his or her presence and by his or her direction, with the intention of revoking it.” (Bold emphasis mine)

- [27] The court of Appeal in **Mac Leish & Anor. v Marryshow** held that a revocation clause in a will is sufficient to revoke a previous will. In **the Halsbury's Laws of England** states⁵:

“An earlier will is revoked by a later will or codicil expressly revoking that earlier will or all former wills, and no particular form of words is required for the purpose of effecting the revocation. An express clause of revocation is not essential, but, if inserted in general terms, operates as a rule to revoke all testamentary instruments previously executed by the testator, including, usually, testamentary appointments.”

- [28] In this instance, the court is of the view that the later will dated May 30th 2010 has revoked the will dated April 1st 2010. There is no evidence to the contrary that the May 30th, 2010 will was not intended to revoke the previous will made in April. Further, there is no evidence or assertion that the revocation clause was placed there by mistake or without the approval of the deceased. A will is ambulatory and can be changed at any time. It is the evidence before this court that the deceased was quite aware of the ambulatory nature of a will as he made other wills prior to the wills in contention.

- [29] The court notes that some of the changes made in May 30, 2010 will, included the appointment of new Executors, and the removal of the defendant as a devisee. The revocation of the defendant as an Executor and removal of his devise in the will shows an implied revocation of the April 1st, 2010 will. The will was executed with the due solemnities by the deceased who from the evidence was of competent understanding and acted as a free agent at the time of the execution. Counsel for the defendant made much about the fact that all previous wills of the deceased were executed at the law chambers of Danny Williams unlike the May

⁵ Halsbury's Laws of England: Wills and Intestacy (Volume 102 (2021), paras 1–566; Volume 103 (2021), paras 567–1304); 1. Testamentary Disposition; (7) Revocation of Will: (iii) Voluntary Revocation : b. Revocation by Later Instrument: 97. Instrument of revocation.

30th, 2010 will. The court is of the view that the mere fact that the May 30th, 2010 will was prepared by a Justice of the peace and not by the previous law chambers did not raise any suspicious circumstances. The report of Dr. Spencer prepared on behalf of the defendant and all the other witnesses described the deceased as being fiercely independent and of sound mind regardless of minor ailment. It is the evidence that Mr. Batson was still capable of driving, yet he was driven by the defendant to the law chambers of Danny Williams. The deceased showed him an unsigned copy of the will to satisfy him that he had indeed provided for him. This is the court's view supports the claimants' assertions that the April 1st, 2010 will was made at the urging and influence of the defendant.

[30] The court accepts the evidence of Ms. Sonia Parke said that the deceased informed her of his intention to remove his brother as a beneficiary. Mr. Anthony Parke's evidence further supports the evidence that the deceased said he would outsmart his brother by making a new will.

[31] Applying the law and the authorities to the facts, this court has not found any presumption of undue influence on the deceased in making the May 30, 2010 will as alleged by the defendant.

[32] In summary, the court is of the view that the deceased was a person of competent understanding of the ambulatory nature of a will and acted as a free agent without any influence at the time of the execution of the May 30, 2010 will. The will was executed with all due solemnities as required by the Wills Act. The cumulative evidence does not suggest that the May 30th, 2010 will was prepared or executed under suspicious circumstances. The Defendant has failed to prove on a balance of probabilities that there was any actual coercion on the part of the beneficiaries in the May 30th 2010 will. Accordingly, the May 30th 2010 will is the true last will and testament of the deceased, Venrole Batson.

Order

[33] It is ordered and declared as follows:

- (i) The will of the April 1st, 2010 is not the true will and testament of the deceased, Venrole Batson.
- (ii) The court pronounces in solemn form for the will dated May 30th 2010 as the true last will and testament of the deceased, Venrole Batson.
- (iii) The claimants are entitled to a grant of probate in solemn form of the will dated May 30th 2010 in the estate of the deceased, Venrole Batson.
- (iv) Costs to the claimants in the sum of \$7,500.00

Agnes Actie
High Court Judge

By the Court

Registrar