

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2018/0342

BETWEEN:

**GERALDINE DICKENSON
(As Executrix of the Estate of Eldina R. Martin Wade aka Elden R. Martin
Wade aka Eldeana Martin aka Eldeana R Martin)**

Claimant

and

JOSEPH PINDER

Defendant

Appearances:

Ms. Mary White for the Claimant

Mr. Lawrence Daniels, with him Mr. Sherfield Bowen for the Defendant

2020: November 23rd
December 11th, 12
2021: January 25th, 28th
February 1st, 19th

JUDGMENT

Background

- [1] **SMITH, J.:** This ruling concerns the application filed by the Claimant dated 17th July, 2020 which calls for the Court to declare that the Will of the Testatrix Mrs. Eldeana Martin Strunkey (herein after referred to as the “Testatrix”) is null and void as its execution did not comply with the requirements of Section 7 of the **Wills Act of Antigua and Barbuda**.

Facts

- [2] Mrs. Martin Strunkey “the Testatrix” died on 26th October, 2013. Her last Will and Testament was read at her home in the presence of the parties, the beneficiaries and attorney-at-law Samantha Marshall who actually read the Will. The Will was dated 10th May, 2012.

- [3] There are several versions of what actually occurred on that day and prior to the reading of said Will. These versions will be set out in the following paragraphs, however to set the scene some issues must be set out in some detail.
- [4] An Application for Probate bearing the signature of the Claimant as well as the Oath of Executrix dated 6th December, 2013. Justice Damien Kelsick as he then was, ordered that the grant of probate issued to the Claimant was null and void. In relation to that order, the Claimant had indicated to the Court that she had played no part in its initiation and signing of said grant of probate. This Court removed the Claimant as Executrix of the Will by Order dated 12th December 2020.

The Law

- [5] The relevant statute governing the issue at hand is found in Chapter 473 of **The Wills Act** at sections 7 and 9. I have set out the relevant sections for completeness.

“**Section 7.** No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot, or end, thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made, or acknowledged, by the testator in the presence of two, or more, witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary”.

“**Section 9.** Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed valid within the enactment in **section 7** as explained by this section, if the 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 signature to the writing signed as his will; and no such will shall be affected by the circumstances 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, 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, whereon no clause, or paragraph, or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear 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: and the enumeration of the above circumstances shall not restrict the generality of the above enactment, but no

signature under this Act 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 shall be made.”

Claimant's Submissions

- [6] The Claimant is the biological niece of the testatrix¹. It is the Claimant's case that she did not see the Testatrix sign the last Will and Testament dated 10th May, 2012. In fact the Claimant said in her affidavit as well as in her oral testimony that the Will was brought to her home by Jacqueline Hughes and Sharon Merchant nee Pinder **after** (my emphasis) Mrs. Martin Strunkey died. It was the Claimant's case that while listening to a radio programme on which the subject was “Wills”, she realized that she had not seen the Testatrix sign the Will in the prescribed manner and that the said Will had been brought to her home to be signed in contravention of Section 7 of the **Wills Act**. The Claimant also alluded to the fact that most of the beneficiaries were not related to the Testatrix by blood and that she had 5 siblings who were “significantly disenfranchised by the Will”.
- [7] There was other material included in the submissions of Counsel however the Court felt that this material did not assist in unraveling the very narrow issue before the Court and I have not chronicled it for the purpose of this decision.

Defendant's Submission

- [8] The Defendant's submissions centered on the fact that the Testatrix signed her Will in the presence of Geraldine Dickenson and Jacqueline Hughes and the Will is valid and that it was properly attested to. To support his case he relied on sworn affidavits from his ex-wife Jacqueline Hughes and his sister Sharon Merchant nee Pinder. In addition to this the Defendant noted that the Claimant made an application for Probate and that she signed an Oath of Executrix on 6th December, 2013. The Defendant pointed out in his submissions that thereafter, the Claimant acted in her capacity dealing with the estate by selling lands and entering into contracts.
- [9] The Defendant also relied on the Affidavit of Attesting Witness dated 18th December, 2013 whereby the Claimant stated that she was one of the subscribing witnesses to the last Will and Testament of the Testatrix at Campsite in the Parish of St. Johns dated 10th May, 2012.

¹ Claimant being the daughter of the Testatrix's brother George Martin Snr, deceased.

Testimonies

Mr. Joseph Pinder

- [10] The Defendant was called as the first person to testify on the request of Counsel for the Claimant. It was his testimony that he was taken as a small child to live with the Testatrix and that he considered her to be his mother and that they had a very close relationship. He stated that he and the Claimant were on good terms but that the relationship deteriorated after some time and that he put the timeline as being when he “was shut out by the Claimant and Counsel Mrs. White”. He went into great detail about the relationship between himself and the Claimant. In particular he spent a great deal of time explaining how the bank accounts came about and that after he and the Claimant had opened a bank account on the advice of Counsel his name was later removed from said account. The relationship continued to decline thereafter. He alluded to Counsel Mrs. White being behind many of the difficulties faced by him and the other beneficiaries.
- [11] He further indicated that the Claimant told him that we (he and the other beneficiaries) were not deserving of their inheritance because they “were not real Martins...that they should not be getting these lands and that she is selling them off”. He also indicated that the Claimant dealt with the estate in a manner which left much to be desired and eventually shut him and the other beneficiaries out, turning all matters over to the law chambers of Counsel Mary White. He expressed dissatisfaction with how things were handled and consulted an attorney for legal advice. He said that after the death of Mrs. Martin Strunkey he took the Claimant to the office of Samantha Marshall where she spoke with the attorney.
- [12] There came a time when the Defendant and the other beneficiaries lost confidence in the Claimant and sought to have her removed. The complaints centered on her using the estate funds for her own benefit and other allegations of breach of fiduciary duty.

Ms. Jacqueline Hughes

- [13] Ms. Hughes is the ex-wife of Mr. Joseph Pinder, the defendant. She gave her evidence via video conference as she currently resides in the United States. Ms. Hughes also resided with Mrs. Martin Strunkey at her home in Campsite up to the time of her death. Her testimony did not veer from her affidavit filed on 13th September, 2018. She stated that she was present when Mrs. Dickenson attended at the home in Campsite and signed the Will of Mrs. Martin Strunkey. She said that she saw the Claimant sign and that they both witnessed the signature of Mrs. Martin Strunkey. She said she heard the Testatrix say “I do not want my business on the streets”. It was her testimony that she knew it was a Will because the Testatrix said so in front of her. She indicated that the documents were placed back in an envelope after the signing and that the said envelope was signed by Mrs. Martin Strunkey. She said that the page that had the rubric “witness” on it was the page that she saw signed and that the pen was provided by Mrs. Martin Strunkey and that she signed the document

last. When this witness was cross examined by Counsel for the Claimant she indicated that she **DID** (my emphasis) see the Claimant sign the said document at Campsite and **not** at the Claimant's home after Mrs. Martin Strunkey's death. It was put to her on more than one occasion that the document was signed after the death and each time she denied that this was the case. She said that she found out that the Claimant was the Executrix of Mrs. Strunkey's Will at the reading of said Will by Ms. Samantha Marshall, attorney at law, at Campsite. She also said that she did not know how the Will got to Ms. Marshall's chambers but that she did provide items of identification for the deceased at the request of Ms. Marshall's secretary and that she did swear to an Affidavit of Identity. In response to the suggestion that Mrs. Martin Strunkey could not have pulled up a chair for her to sit at the table because of her weight and mobility, she said that Mrs. Martin Strunkey motioned for her to sit and not that she physically pulled out a chair.

Ms. Sharon Merchant

- [14] This witness is the sister of the Defendant. She currently resides in the United States and gave her evidence via video link. She told the Court that Mrs. Martin Strunkey had raised her from the age of nine and that the Claimant was Mrs. Martin Strunkey's eldest niece. She referred to the Testatrix as her mother. She indicated that she came to Antigua upon the death of the Testatrix on 15th November, 2013 and attended the reading of the Will at Campsite. She left Antigua on 23rd November, 2013. She indicated that at the reading of the Will attorney Ms. Marshall told the gathering that the Executrix of the Will was the Claimant, Mrs. Geraldine Dickenson and that she explained what the position entailed and that it was not a paid position. Significantly she noted that the Claimant had no reservations about carrying out the role of Executrix and told them that they "were to handle their business". She said that she and her brother Mark collaborated to sort out the parcels that they had been bequeathed under the Will. She indicated that she never attended at the home of the Claimant with Ms. Hughes while she was in Antigua except to attend the repass; she never asked the Claimant to sign a Will after the death of her mother. This was put to her under cross examination and she maintained that this was not true. It was put to her more than once that she attended Mrs. Dickenson's home and that she brought a pen with her and asked the Claimant to sign. This was vehemently denied. It was also put to her that attorney Marshall did not explain the role of executrix to the Claimant and again this was denied. She also stated that a time came when she was advised by the Claimant that all dealings with the properties bequeathed to her and her brother were to be handled through the office of Counsel Mary White. The witness's passport was exhibited to the Defendant's defence demonstrating when she arrived in Antigua and when she departed.

Mrs. Geraldine Dickerson

- [15] The testimony of the Claimant was fraught with memory lapses and credibility issues. Her oral testimony differed somewhat from what she deposed in her Affidavit. Under oath she said that a

document was brought to her home for signature. She did not read the document but that the ladies (Pinder and Hughes) told her that it was Mrs. Martin Strunkey's Will and she was required to sign it and she did so. She indicated that the visit took place after the burial of Mrs. Martin Strunkey on 19th November, 2013 but before the reading of the Will occurred. She also said that her son was present when the two ladies visited her.

[16] The Claimant indicated that Mrs. Martin Strunkey was her aunt but that they were very close in age. She denied being present at the signing of the Will by the Testatrix at her home in Campsite. She also denied signing a raft of documents pertaining to the estate including the Grant of Probate and the Oath of Executrix. All of this was after her signature was put to her by Counsel Mr. Daniels, and she said that this was not her signature. During the course of her testimony she often indicated that she could not remember certain events and that she relied on Counsel Ms. White for guidance. This is not surprising as the Claimant is a woman of advanced years. She said however that she recalls Sharon Merchant and Jacqueline Hughes attending at her home and asking her to sign the Will sometime after the death of Mrs. Martin Strunkey. It was asked of her how she knew that it was indeed the Will as she said that she did not read the documents. She said that the two ladies told her so. She also indicated that she did not read the document before she signed it. It was put to her that she never attended at attorney Marshall's chambers with Mr. Pinder. Under cross examination she indicated that she did not know the value of her aunt's estate and that "Mr. Joseph Pinder was doing as he liked even though I was there". She also denied that it was her signature on a letter sent regarding the sale of lands to the government of Antigua. She admitted to authorizing a salary increase to Garry Roberts from \$1,000 to \$4,000 per week for works carried out in relation to lands at Cedar Hill. She said she could not remember filing Claim Number 198 in the Courts and that she relied totally on Counsel White for guidance. At the reading of the Will she said that attorney Samantha Marshall did not explain anything to her and that her son was present. It was put to her that she had used estate funds to pay her granddaughters school fees and pay for insurance for a vehicle car owned by her son.

[17] Mrs. Dickenson by her own accounts was a woman who travelled and studied to be a nurse in Antigua before embarking upon studies in the United Kingdom and the United States. This is a woman who had experience in distributing assets of her late father and late husband. She indicated to the Court that she understood her role as Executrix of her aunt's Will, but that her aunt had never discussed her being her Executrix with her.

Findings of the Court

[18] As indicated in paragraph 8 above, there was a vast amount of material that was put before the Court. However a large percentage in my view was irrelevant. Counsel for the Claimant urged the Court on numerous occasions to view the case in totality and I have endeavored to do so, however much of the material does not assist in determining the very narrow issue to be decided.

- [19] The Claimant has indicated that her son was present when both Jacqueline and Samantha attended at her home and asked her to sign the Will. No affidavit was obtained from him to corroborate this. In similar vein no affidavit was obtained from attorney Samantha Marshall to clarify issues relating to the Claimant's involvement in the probate process.
- [20] Ms. Sharon Merchant and Ms. Jaclyn Hughes came across to the Court as being credible, reliable and honest. I found Ms. Merchant to be forthright and straightforward when it was suggested to her that she and Ms. Hughes had attended at Mrs. Dickenson's home for her to sign the will. She denied this unequivocally as well as other suggestions which were put to her by Counsel White. Similarly I also found the testimony of Ms. Hughes to be credible and believable. She described the scenario whereby she and Mrs. Dickenson were present at Campsite where the Will was signed in their presence.
- [21] In relation to Mrs. Dickenson I found her credibility to be severely compromised. The issue of the spelling of her name was partially worrisome. She indicated that her name was spelt incorrectly on certain documents but she signed them nonetheless. On the second day of cross examination by Mr. Daniels it was put to her that the Court made an Order by Justice Wilkinson as she then was, that an independent audit be prepared tend that no other dealings be made to the estate. However, despite the Court Order the Claimant acknowledged that she continued to deal with the estate giving Gary Roberts a salary increase and continued to negotiate contracts and make payments for land. The Court also found that it was incredulous that Mrs. Dickenson would act under the Will, that her signature appeared on the Oath and other various documents and then for her to recant and say she did not see the Testatrix sign said Will. The Court did not find her credible preferring the evidence of Hughes and Merchant thus rejecting Mrs. Dickenson's testimony. Significantly, even after the Claimant recanted she went on to file claim ANUHCV2018/0342 presumably on the advice of her attorney Mrs Mary White.
- [22] Another matter that disturbed the Court was the payment of school fee and payment of car insurance made by the Claimant which she admitted that she did not receive permission from the beneficiaries to make. When challenged on the raise in salary to Mr. Gary Roberts her response was that "workers had to be paid". Certain comments made by the Claimant called into question her sincerity, honesty and credibility for this Court. It was as if the Claimant was peeved at the dispositions made by her aunt in her Will and she made no effort to hide her disapproval.
- [23] The Court had the opportunity to compare the signature of the Claimant on documents that she admitted to signing and documents which she said she did not sign. To the Court, the signatures appeared to be identical.
- [24] The learning in Halsbury's Law Vol 50 (4th) at paragraph 268 is instructive. "there is a presumption of due execution where there is a proper attestation clause, even though the witness have no recollection of having witnessed the will but this presumption may be rebutted by evidence of the attesting witness or otherwise."

[25] The very old case of **Vinnicombe vs. Butler and another**² is also helpful. In that case the Testatrix did not have an attestation clause and the Defendants pleaded that the Will was not properly executed. The attesting witnesses were examined and three of them remembered nothing about the matter. The other attesting witness deposed that on the 10th April, 1857 she was asked by the Testatrix to sign her Will; that the Testatrix signed the document in her presence and she signed in the presence of the Testatrix and the other attesting witnesses. She could not remember if the Testatrix signed before or after but she thought it was after. The Court took into account all the testimonies of the attesting witnesses and held that the statements reasonably led to the conclusion that she did sign the Will in the presence of the attesting witnesses and that the said Will was valid and entitled to probate. In **The Goods of Frances Peverett** it was stated by Jeune P that “the Court is always extremely anxious to give effect to the wishes of persons if satisfied that they really are their testamentary wishes and secondly, the Court will not allow a matter of form to stand in the way if the essential elements of execution have been fulfilled.” In dicta the Court also said “The Court leans more towards testacy than intestacy”.

[26] Finally the Court finds that the Claimant in this matter failed to comply with Rule 68.4 (1) (a) by failing to lodge the Grant of Probate within 7 days in accordance with said rule.

[27] Court's Order

1. Having heard the parties, the witnesses and having weighed their reliability, the Court finds as a fact that the testatrix Mrs. Martin Strunkey signed her last will and testament in front of the witnesses Ms. Jaclyn Hughes and Mrs. Geraldine Dickenson and that the will is therefore valid.
2. The Claimant has already been removed as executrix by this Court. Therefore, a list of right and proper persons willing to serve as executrix or executor is to be submitted to this Court no later than 8th March, 2021.
3. Cost in this matter to be paid by the Claimant to the Defendant in the sum of \$1,000 to be paid no later than 7 days from today's date.
4. The perfected judgment will be available in 5 days' time.

Ann Marie Smith
High Court Judge

By the Court

Registrar

² S.W. & TR. 579

