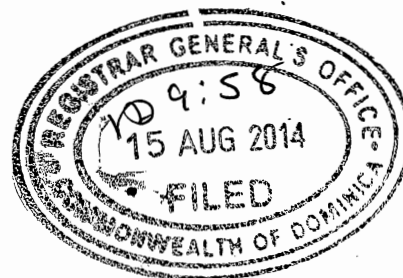


EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2012/0055



BETWEEN:

ALLICK HUNT

Claimant

And

MARIE JOSE EDWARDS ET AL

Defendant

Appearances:

Ms. Lisa De Freitas for the claimant

Mrs. Singoalla Blomqvist-Williams for defendants

.....
2014: January 23rd, 24th

August 15th
.....

JUDGMENT

- [1] **COTTLE, J:** Mrs. Olivia Edwards Hunt died on 16th December 2010. During her lifetime she had executed two wills, one in 1983 and the other in 2002. The defendants were named as the executors of the 1983 will. They applied for and were granted probate of that will on 5th October 2011.

- [2] The claimant has instituted the present proceedings to contest the validity of the 1983 will. He seeks a revocation of the grant of probate and wishes this court pronounce in solemn form for the 2002 will.
- [3] The defendants contend that the 2002 will is invalid. They advance three reasons for their view. Firstly, they say, the 2002 will was not executed in accordance with the **Wills Act** because it was not signed by the testatrix in the joint presence of the two attesting witnesses. The second complaint is that the testatrix lacked testamentary capacity at the time of execution of the later will. The final string to the defendant's bow is that the 2002 will was procured by undue influence.
- [4] These then are the issues which fall for determination in this matter. I shall treat them in the order that the defendants have placed them.

The Wills Act

- [5] Under section 8 of the Wills Act Chap 9:01 of the Laws of Dominica, it says as follows:
- "No will shall be valid unless it is in writing and executed in the manner hereinafter mentioned, that is to say, it is signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time and the witness attest and subscribe the will in the presence of the testator, but no form of attestation shall be necessary."
- [6] As the claimant seeks to assert the validity of the 2002 will, it falls for him to demonstrate on a balance of probability that the requisite formalities have been complied with. The evidence in this regard came from Mr. Louis Robinson. He is one of the attesting witnesses. He swore that Mr. Terry James, a gentleman who had received training in law in the United Kingdom, prepared the will. He read it out to the testatrix. She appeared to understand the contents. She signed in the presence of Mr. Robinson and Mrs. Medora Christmas who were both present at the same time. The witnesses also signed the will in each other's presence and the presence of the testatrix.

- [7] Mr. Louis was not challenged on this account by cross examination. Given this apparent concession by the defendants on this issue I find that the claimant has established that the 2002 will complied with the formalities required under the **Wills Act**.

Testamentary Capacity.

- [8] In 2002, the testatrix was attended to by Dr. Nasiro. She would visit him regularly. She had a medical book where all of the medical treatment she received was noted by the doctor attending to her. The book revealed 14 visits to Dr. Nasiro in 2002 and one visit to Dr. Grell. Dr. Grell did not testify. Dr. Nasiro did. On 3rd August 2002 Dr. Nasiro saw the testatrix in his office. He was not aware that it was proposed that she execute a will on that date but he found her to be mentally capable of transacting her official business. Dr. Nasiro was cross examined. He agreed that notes in the medical book of the testatrix showed complaints by her of some memory loss.
- [9] A note on 9th March 2002 related another complaint of some episodes of memory loss. A note of 8th June 2002 was to the effect that the testatrix thought her memory was improving. There is also an entry at 8th June 2003 that memory lapses were again a complaint of the testatrix.
- [10] Paul Edwards, the first defendant testified that in 2000 the testatrix visited him in Canada. He says that he was able to discern within a few minutes of seeing her, that the testatrix was not of sound mind. The testatrix had travelled on her own from Barbados to Canada without any issue. There was also evidence that the testatrix was a defendant in a civil suit in 2002. She was represented by counsel. She signed an amended defence on 29th July 2002. She succeeded in the litigation.
- [11] Dr. Griffin Benjamin examined the testatrix in 2006. Based on his reading of the notes in the medical book and his examination, he concluded that the testatrix had been suffering from a cognitive disorder dementia, characterized by confused behavior, poor judgment and impaired memory. According to Dr. Griffin the record indicated a long history of memory

impairment for 4 years prior to his examination. He defined a cognitive disorder as a situation where the affected individual loses the ability to manage his daily normal life and where basic functions like memory, making decisions, planning, organizing, cooking, washing and bathing have been impaired.

- [12] The claimant also gave evidence as to the capacity of the testatrix. He says that she merely told him that she wished to make a will. He was ignorant of the 1983 will. He consulted Mr. James, who came and spoke privately to the testatrix. Mr. James went away and returned a few days later with the document for the signature of the testatrix. Mr. James brought along with him the two attesting witnesses. He was confident that the testatrix had the necessary capacity.
- [13] The court also heard from Mr. Mally Peltier. He was a friend of the testatrix. He testified that after her marriage to the claimant, the relationship between the testatrix and himself changed. He says that as far back as 1998 he noticed that the testatrix was not recognizing him as well as she did before. He found that her condition gradually worsened and she displayed a tendency to repeat things over and over.
- [14] Claudia Alexander gave evidence that she saw signs of forgetfulness in the testatrix since 1998 when she worked with the testatrix at her restaurant at the airport. She said the testatrix would forget orders placed by customers or ask for the same order several times.
- [15] The law governing this area is well set out in the case of **Banks v Goodfellow**¹. Basically, the testator must understand the effect of his wishes being carried out at his death. He must know the extent of the property of which he is disposing and he must appreciate the nature of the claims on him. Once the testator is able to understand these matters he is considered to have testamentary capacity.
- [16] Counsel for the defendants submits that having regard to the evidence of the witnesses, especially Dr. Benjamin, this court should hold that at the time of execution of the latter will,

¹ [1870] QB 549

the testatrix lacked the necessary capacity. Counsel also pointed out that the will speaks of a child Jose Marie when the true name of the daughter of the testatrix is Marie Jose.

- [17] The will also gives to the claimant a property at Canefield which the testatrix had alienated since 1986, as well as certain property which had come to her from her late husband and which she held only a life interest. All of this points to lack of capacity to dispose of her property by will, according to the argument by the defendants.
- [18] The case of **Leo Groton v Leoma Groton**² was cited as an example of a court finding that a testatrix lacked capacity. The will of the testatrix spoke of lands called "Bogoston". The relatives of the testatrix owned lands at Bogoston. The property of the testatrix was "Boseyjour". Because the testatrix allowed this to pass uncorrected when the will was read over to her before signing, the court concluded that she was confused. She was so confused that she did not appreciate the extent of her property and as such, lacked capacity to make a valid will.
- [19] The claimant is propounding the validity of the later will. It is upon the claimant that the burden of proof falls. In the present case the will is prepared by an independent legal professional. He clearly did not doubt the mental capacity of the claimant. Dr. Nasiro was her attending physician. On that day that the will was executed Dr. Nasiro thought the testatrix had the mental capacity to transact her official business.
- [20] Dr. Benjamin thought otherwise but he did not have the benefit of examining the testatrix at the relevant time. I am content that the evidence adduced by the claimant is sufficient to establish on a balance of probabilities that the testatrix had the required mental capacity at the time she executed the later will.
- [21] In support of the argument that the will was procured by undue influence counsel for the defendants argues that the evidence of the witnesses paints a picture of the claimant as very manipulative and controlling. This is buttressed by the fact that the will was prepared

² DOMHCV2002/0004

by Terril James a friend of the claimant rather than legal practitioners whom the testatrix had retained to represent her in other matters. The doctor was not told that the testatrix intended to execute a will on the day she was examined. All these things points to a situation where the will of the testatrix was completely subsumed by the influence of the claimant.

- [22] It must be appreciated that the defendants, having asserted that the will was procured by undue influence, have a duty to establish this on a balance of probabilities by means of evidence adduced at the trial. In their pleadings, the defendants aver that the claimant gave instructions for the alleged will and was present when the testatrix purported to execute it. In **Melbourne Smith and Lillian Brown v Elridge Brown** ³ Blenman J, as she then was, at paragraph 15, puts it thus of an allegation of undue influence

“Strong evidence is required since the allegation is a serious one. If a person makes the allegation without sufficient evidence, the court may penalize them in costs.”

- [23] In the present case the evidence adduced by the defendant's falls far short of demonstrating that the will of the testatrix was overborne and that the circumstances of the execution are inconsistent with any other view but undue influence.
- [24] This case is one where the second defendant caused his mother to guarantee a loan on his behalf. He defaulted and the testatrix was compelled to defend the bank's claim for repayment alone since the second defendant chose to take no part. The court found that it was the second defendant who had unduly influenced his mother to act to her detriment. His attitude might offer some explanation as to why the testatrix may have opted to change her bequests and execute a new will. I find that I am not persuaded that the claimant exercised any undue influence over the testatrix.
- [25] It follows that the claim is found to have been established and judgment is entered for the claimant. The grant of probate of the earlier will is revoked and this court pronounces in

³ ANUHCv 2004/0268

solemn form for the will dated 3rd August 2002. The defendants will pay the claimants costs of the claim being prescribed costs in the sum of \$7,500.00



Brian Cottle

High Court Judge

