

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF ANGUILLA
(CIVIL)
AD 2008**

CLAIM NO. AXAHCV/2007/0060

BETWEEN:

**BERNICE STAPLETON
(As executrix of the Estate of Percy Sylvester (deceased))
Claimant**

AND

**ALLYNDEL J. SYLVESTER
Defendant**

APPEARANCES:

Mrs. Tara Ruan for the Claimant

Ms. Eustella Fontaine for the Defendant.

**Date: 2008 7th July
19th September**

JUDGMENT

- [1] **GEORGE-CREQUE, J.:** Percy Sylvester (“PS”) died on 11th February, 2006 in Anguilla. He was not married but is survived by six children, three of whom are the children of Lineth Webster with whom he had an ongoing relationship. The Defendant, Allyndel Sylvester, is one of the children he bore with Lyneth Webster. In October, 1995 PS executed a will dated 30th October, 1995 (“the Will”) in the presence of Mary Richardson and Vyrone Ruan who signed the Will as attesting witnesses. Shortly thereafter, PS then gave the Will to

one Carolyn Gumbs. She kept it in a drawer at her home. After the death of PS, Carolyn Gumbs, on or about 21st February, 2006, delivered the Will to his sister Bernice Stapleton, the Claimant herein. By the Will she was appointed as his Executrix. She resides in the United States but was frequently in communication with PS. By the terms of the Will PS gave all his property real and personal (save for the payment of his debts and testamentary expenses) to Carolyn Gumbs who he described therein as his friend. At the time of death, PS was possessed of a dwelling house situate at Cauls Bottom, Anguilla, where he normally resided up to the time of his death.

- [2] On 21st March, 2006 Allyndel Sylvester applied for a grant of Letters of administration as a beneficiary of the Estate of PS on the basis that he had died intestate. On 2nd June, 2006 a caveat was lodged against the grant of Letters being issued to Allyndel Sylvester on behalf of Ms. Stapleton on the basis that PS had left the Will. Ms. Stapleton then, by her Attorney, on March 21st 2007 applied for probate of the Will and produced the Will given to her by Carolyn Gumbs. Neither a grant of Letters nor of Probate of the Will has been made. Ms. Stapleton seeks a declaration that the Will is the Last Will of the deceased. Mr. Sylvester (the son) contends that the Will was revoked by PS when sometime before 1999, he purportedly tore up a document said to be his will in the presence of Lineth Webster and one Patrica Payne-Webster who is said to be a long time friend of both PS and Lineth Webster.

The issue

- [3] The issues arising in this case are:
- (i) Whether the document which PS tore up was a duplicate or copy of the Will; and
 - (ii) If the document was a duplicate, whether PS by tearing up such duplicate intended thereby to revoke the Will.

The Evidence

- [4] Patricia Payne Webster in her affidavit said that:
- (a) sometime before 1999 Lineth Webster visited her at her office at Public Works Department and showed her a document which she said she had found among

PS's papers at his home at Cauls Bottom. She read it and it looked to be a will in which he would leave his property to Carolyn Gumbs and that his sister would be Executor. She couldn't recall the sister's name.

- (b) There were signatures on it but couldn't say whose signatures they were.
- (c) She saw the document again at PS's house when he went inside the house and returned with a document and showed her. She said, it was the same document that Lineth Webster had showed her a few months earlier at Public Works. It was a will of Percy Sylvester leaving all his property to Carolyn Gumbs and in front of Lineth Webster and herself he tore up the document in several pieces and at the same time said *"that no one should inherit his property before his children and that he loved his children."*
- (d) She could not recall if she saw a date on the document in terms of what year, or date or the name of the executrix. She was not checking for a date of the document when she saw it in the yard. She said that PS tore up the document and threw it away. No pieces of the torn document were produced. For the first time in re-examination she stated that the same document that PS showed her was the same document as the "Y" was left out of his name and she remembered that. She also said for the first time that the document had a seal or stamp.

[5] Lineth Webster in her affidavit said that:

- (a) sometime before 1999, she found a document in PS's papers which stated that he would leave his property to Carolyn Gumbs. She saw signatures on the document but didn't know who signed the document. She took the document to Patricia Payne Webster who told her that it was a Will and that if Percy died she (Lineth) and the children would get nothing and that she needed to see a lawyer.
- (b) She, being scared of PS's reaction if he found out she had gone through his personal papers said she replaced the document among his personal papers.
- (c) Sometime later, after PS had been hospitalized for a few days, Patricia Payne Webster came at the house. They were all standing outside and whilst Patricia

Payne Webster was speaking to PS he went inside and came back with a paper that he showed to Patricia Payne Webster and it was the same paper she had shown to Patricia Payne Webster earlier.

- (d) PS tore up the document into pieces in their presence and at the same time said *"No one will inherit his property before his children"*
- (e) By this time she was very upset and told PS how could he do this to her, that he would make her and the children fight to get the property. PS explained that he was sorry and that he did not want someone to inherit his property before his children. After this, they never spoke of the matter again.
- (f) Sometime after that incident she told his sister Bernice Stapleton that PS had torn up his will.
- (g) Sometime after PS's death she found another document amongst his papers. It was not signed nor dated nor does she know who prepared it.
- (h) At no time did PS tell her that he had a will and that he always told her that the property he had in Anguilla belonged to his children born in Anguilla and property in St. Vincent for his children born in St. Vincent.
- (i) She could not recall the day, month or year that Patricia Payne Webster visited the house.
- (j) The document had a date but she couldn't say what date was on the document she found, or what date was on the document that she saw PS tear into pieces.

- [6] Carolyn Gumbs, in her affidavit, says she was a friend of PS. He was also her mother's good friend. He periodically lived with her and her mother from time to time since she was about age 4 to 5. She and her mother assisted him in the building of his house at Cauls Bottom. In 1995 he told them he had made a will and he gave to her the original Will and told her he wanted to give his house to her since her mother had helped him with the construction. She kept the original Will in a drawer until the day of his funeral. Apart from her mother, she told no one else about the Will. On 19th February, 2006 she contacted his sister Bernice and notified her of the Will and on or about 20th or 21st February, 2006 she handed over the Will to her in the presence of PS's daughter Lynthia Jackson.

[7] Bernice Stapleton in her affidavit said that:

- (a) her brother complained to her many times about the conduct of his children and his relationship with their mother Lineth. In 1996 just prior to her visiting him he said he was living alone but shortly thereafter, Lineth Webster and the children had moved back in. He had also complained to her about Patricia Payne – Webster and the fact that he considered her a bad influence on Lineth Webster and did not like her coming to his home.
- (b) In 1995, he had telephoned her and told her he was preparing to make a Will and asked whether she was willing to be his executrix. She agreed. He did not tell her the contents of the Will. He never sent her a copy. They had no further discussions about it.
- (c) In and around December, 2005 he was very distraught and told her the children were causing him great stress and that Allyndel had threatened and tried to hit him. She advised him to have them leave the home.
- (d) In January, 2006, he told her that Allyndel and Miguel were no longer living at the house; that he had allowed Abdel to return as he was uncomfortable at his new residence and would only stay until he could make other living arrangements.
- (e) He told her also of a pending legal matter and that once that matter was over he was going to have everyone vacate the house and he was going to rent it out and he would live with a friend. Prior to his death however, Lineth and two of the children had moved back into the house.
- (f) On 11th February, 2006, Carloyn Gumbs telephoned her and told her of her brother's death. On or about 19th February, 2006, she saw and read the Will shown to her by Carolyn Gumbs and on 21st February, Carolyn Gumbs turned over the Will to her.

In her testimony she denied that anything was told to her by Lineth Webster or that Lineth Webster ever contacted her in the United States. She said most of her conversations were with her brother and that what she knew of him and his family was what he told her.

The Law

- [8] An appropriate place to start is with the Wills Act¹. Section 18 states in effect that a will may be revoked by various methods. One such method is by tearing but such tearing must be with the intention of revoking the same. There are accordingly two elements which must be proved in the instant case, namely: (i) the act of destruction by tearing; and (ii) the intent to revoke. This is not a case where the original Will has been mutilated or not forthcoming. The original Will in its wholesome state has been submitted with the application on behalf of the Executrix for probate. It is not suggested that this is not the original Will. It complies with the formal requirements of the Wills Act and thus on its face is presumed to have been duly executed. The onus is therefore on the Defendant to establish that: (i) The document **PS** is said to have destroyed was a duplicate of the Will, and (ii) That by virtue of destruction of the duplicate; he intended to revoke the Will.
- [9] *“The destruction with intention to revoke of one part of a will executed in duplicate amounts to a revocation whether only one part or both parts were in the possession of the testator. And the presumption generally is that by such destruction the testator intended complete revocation.”*² In my view, the evidence establishing such revocation must be clear, unequivocal and convincing.

Findings

- [10] In this case the evidence adduced is far from satisfactory for these reasons:
- (i) Both Lineth Webster and her friend Patricia Payne Webster, were unable to say with certainty the date that Lineth took the document to her at Public Works Department, save for a vague reference to it being prior to 1999.
 - (ii) They were unable to establish the date that the act of tearing took place, save to put the time as being a few months later. By inference I take it that the act of tearing took place either before 1999 or sometime in 1999.
 - (iii) Worse yet is the fact that neither could properly identify the document with sufficient certainty, save to say that they saw a date on the document and there

¹ R.S.A c.W25

² William’s Law relating to Wills 6th Ed. Pg.152; Halsbury’s Laws 4th Ed. Para. 292.

were signatures. They were unable to say however, what was the date on the document or to identify any of the signatures they saw thereon. Mrs. Payne Webster stated that it named his sister as executor but she could not recall the name she saw, and that in the document he had left his property to one Carolyn Gumbs. Of significance is the fact that they were unable to identify even the signature of the Testator on the document. It is only in re-examination that Patricia Payne Webster stated that the document she saw had a misspelling of PS's name –(the “:Y” being missing) and that the document had a seal or stamp. The court is mindful of the fact that by the time of trial attached to the very affidavits of both Lineth Webster and Patricia Payne Webster were copies of the Will which had by then been submitted to probate. Accordingly, I do not accord much weight to these statements having been forthcoming only at this stage. No mention was made of these matters by Patricia Payne Webster even in her affidavit evidence sworn on June 20th, 2008.

- (iv) There is no evidence that PS himself on the day of tearing the document identified the document to either of them as his Will or a duplicate or copy of his Will. Accordingly, I am not satisfied that it has been shown that the document said to have been torn up by PS was in fact a duplicate or copy of the Will.
- (v) I also take into account the interest of the parties. Lineth Webster is an interested party and admits that she was upset over the fact that PS had, in essence, left her nothing, but for her and the children to fight for the property. Patricia Payne Webster, by her own admission, expressed strong views to PS in relation to Lineth putting all her money in the house and him trying to give the house to a stranger.
- (vi) Furthermore, PS had ample time to retrieve the original Will from Carolyn Gumbs. He knew it was in her possession. There is no evidence that he was prevented from retrieving it. Yet, following his actions said to be in revocation taken more than six years prior, he told neither his sister with whom he had a close relationship nor did he tell Carolyn or her mother Beatrice about his actions. His sister, Ms. Stapleton, denies that Lineth called her and told her of PS's destruction of the Will. She has no interest in PS's estate and derives no benefit under the Will and I accept her as a witness of truth.

- (vii) Not a single bit of the torn document was produced in evidence. Ms. Payne Webster says that PS threw them away.
- (viii) Given the length of time which elapsed between the stated act of destruction of the document if it was indeed a duplicate or copy of The Will, there was ample time prior to the death of PS, if reasons existed preventing him from retrieving the original Will, to execute an instrument in same manner as a will revoking The Will. No such document was found save for a handwritten document which was unsigned and undated with no one knowing who wrote it. Accordingly, the court derives no assistance from the production of this document.

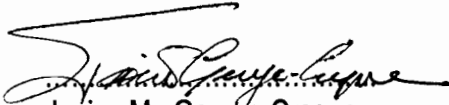
[9] When all of the evidence is weighed in the round, whereas I found the evidence of Carolyn Gumbs and Ms. Stapleton to be forthright, the same cannot be said of Lineth Webster and Patricia Payne Webster. In some instances their evidence on critical matters dealing with the identification of the document they say they saw was vague and bore no specific reference to time or to what in fact they did see or recognize which would have been helpful in a case such as this. Also, in some respects it appeared to be contradictory in respect of whether PS and Lineth at all times lived together. Furthermore, the circumstances disclosed on the evidence surrounding the purported act of revocation appear suspect. Both Lineth and Ms. Payne Webster appeared to be expressing very strong disapproval of any decision by him to leave his property to Carolyn Gumbs. This in itself begs the question as to whether PS, (assuming it was a duplicate of The Will) in tearing up the document intended thereby to revoke the Will as distinct from a mere act of appeasement.

Conclusion

[10] Based upon the foregoing, I conclude that the Defendant has not established that PS revoked the Will by tearing or otherwise. His counterclaim for a grant of Letters of Administration is dismissed. I find that the Will is the valid and subsisting will of PS and that Ms. Stapleton is entitled to a grant of Probate on her application for such grant.

Costs

- [11] As agreed by the parties, costs of this action shall be borne by the Estate in the sum of US\$5,000.00.



Janice M. George-Creque
High Court Judge