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Check, check and check again: A contentious probate case summary

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Claim

In the case of *Mundil-Williams v Williams* [2021] John Williams was a divorced Welsh farmer with four sons. In 2014, he executed a Will (**2014 Will**). The 2014 Will left his interest in the farm to his eldest son, Richard.

The Claimant, a son of the deceased, asked the Court to pronounce against the validity of the 2014 Will on the grounds that his father lacked knowledge and approval of its contents, and to propound in favour of an earlier Will executed on 5 October 1990 (**1990 Will**).

Facts

The 2014 Will was prepared by a firm of solicitors. The testator met a secretary of the firm to discuss his wishes. The meeting notes show that he intended that the farm should form part of his residuary estate: 50% to go to Richard; and 50% to be divided equally between all four sons. The file was then passed to a paralegal whose notes record the farm being gifted in its entirety to Richard and not forming part of the residuary estate. The paralegal phoned the testator unannounced to confirm this and drafted the terms of the 2014 Will accordingly.

This effectively disinherited the other sons as there was practically nothing in the residuary estate. The testator was given the 2014 Will to review and attended the law firm to sign it, witnessed by the paralegal and secretary.

From the paralegal and secretary's contemporaneous notes, it was clear that the testator intended to give Richard a greater share of the estate as he was responsible for the practical running of the farm and was a partner in the farming business. There was no dispute as to the testator's testamentary capacity and the 2014 Will was validly executed.

The dispute revolved around whether the farm falling out of the residuary estate represented his testamentary intentions. The Claimant claimed that the testator did not know and approve the contents of the 2014 Will as it did not reflect the wishes of the testator as expressed to both his family and in his instructions given to the solicitors.

The law

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The law was not in dispute in this case. A party who is propounding a will must prove that the testator knew and approved its contents at the time he signed it. Usually knowledge and approval will be inferred from the facts, that the testator had testamentary capacity and that the will was duly executed. However, in some circumstances a suspicion will be raised in the mind of the Court and more will be required before the burden is held to be discharged.

The questions for the Court were:

1. whether there were circumstances that nevertheless gave rise to suspicions that the testator may not have known and approved the contents of the 2014 Will; and, if there were
2. whether a consideration of the entirety of the evidence dispels those suspicions.

The decision

The judge reached the "clear conclusion that the testator did not have knowledge and approval of the contents of the 2014 Will and that he seriously misunderstood its provisions, in that he did not appreciate that the Farm was not part of the residuary estate and would go entirely to [his son] Richard. Thus the 2014 Will did not represent his testamentary intentions."

This conclusion was reached as there was no evidence to suggest that anything occurred between the giving of the instructions and the finalising of the 2014 Will to cause the testator to change his mind in any significant way. After providing his initial instructions to the secretary, he did not contact the law firm to change his instructions and although he had reviewed the 2014 Will, he had read it in accordance with his initial instructions. No one had alerted the testator to the effective redundancy of the division of the residuary estate between his sons. The change in instructions was a result of a misunderstanding on the part of the paralegal.

Rather than render the 2014 Will void and find in favour of the 1990 Will, the Court used its powers to rectify the 2014 Will to reflect the testator's true intentions.

Please contact David Jeffery if you would like to discuss any issues relating to contentious probate, or Joanne Seal regarding wills and estate planning.

You can also learn more about our Wills, Probate & Estate Planning services and team here.

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