

IN THE COUNTY COURT AT MANCHESTER
BUSINESS AND PROPERTY COURT OF MANCHESTER
THE PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Case No: PT-2021-MAN-000074

Courtroom No. 46

1 Bridge Street West
Manchester
M60 9DJ

Friday, 11th March 2022

Before:
HIS HONOUR JUDGE HALLIWELL

B E T W E E N:

LAURA SMITH

and

MICHAEL GANNING

MR T GOSLING (instructed by Stephanie Ewan) appeared on behalf of the Claimant
THE DEFENDANT appeared In Person

JUDGMENT
(Approved)

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HHJ HALLIWELL:

1. By these proceedings, the claimant Laura Smith seeks a determination that her mother, the late Alison Wynn Ganning, died intestate. She seeks an order pronouncing against the will dated 5 April 2016 and revoking the grant of probate obtained under that will. I shall refer to Laura Smith as “Ms Smith” and the late Alison Ganning as “Mrs Ganning”.
2. Before me Mr Gosling has appeared on behalf of Ms Smith, and the defendant Mr Ganning has attended to represent himself in person. In doing so, he has made submissions and examined the witnesses.
3. The proceedings were only commenced on 20 May 2021. They were commenced upwards of five years after the death of Mrs Ganning, on 11 April 2016, and upwards of three years after her husband, Mr Michael Ganning, to whom I have referred, obtained a grant in common form out of the District Probate Registry.
4. On the hypothesis that Mr Ganning is himself entitled under the 2016 will to the whole of Mrs Ganning’s estate, he would have been entitled to realise, collect and apply her estate under the will and, having obtained a grant of probate, he would be treated as having a good title to her estate during the period of the grant. This means, for example, that had he made dispositions, in his capacity as his late wife’s executor, to third-party purchasers of real property vested in her sole name prior to her death, these would have remained valid under the provisions of section 37 of the Administration of Estates Act 1925. This would apply regardless of the order I am now being invited to make.
5. However, if Ms Smith is able to establish that the 2016 will is void and the original grant to Mr Ganning is thus to be revoked and a new person or representative appointed, it is likely that the new personal representative will make a claim against Mr Ganning for the assets he has received. He may also be exposed to a personal claim from Ms Smith. Ultimately, he might reasonably seek legal advice about the implications of this once I have given judgment.
6. In these circumstances, I have considered whether I should entertain the claim at all, given Ms Smith’s failure, at the outset, to protect herself by registering a caveat and her failure to issue probate proceedings for, as I say, a period of more than five years measured from the time of Mrs Ganning’s death. There can be little doubt that, during this period Mr Ganning will have fully administered the estate.
7. As I mentioned at the beginning of the hearing, this is a deeply regrettable state of affairs. However, I have decided to entertain the claim for the following reasons. Firstly, the point has not been taken, on Mr Ganning’s behalf, and following direction scheduling the case through to trial, it has now been brought before me. If the point was to be taken, it should have been taken much earlier. I am aware that Mr Ganning is a litigant in person, but consistently with the judgment of Lord Sumption in *Barton v Wright Hassall LLP* [2018] UKSC 12, I can see no good reason at this stage to treat him differently from a represented litigant in this respect. No doubt reasonable allowance should be made for a litigant in person like Mr Ganning at case management hearings and the conduct of their case. However, I can see no good reason why, having failed to take that point earlier, he should be treated differently from a represented litigant for this purpose.
8. Secondly, whilst the delay is substantial and to that extent highly unsatisfactorily, Ms Smith has at least provided an explanation as to why it happened. She says she was unable to fund the litigation until her current solicitors offered to act for her subject to a CFA. It was at least

implicit in her evidence that she has sought to obtain the services of solicitors but was unable to progress it further for want of funds. No doubt she might have done more to obtain representation earlier but this issue has not been explored.

9. Thirdly, since he survived Mrs Ganning for 30 days, Mr Ganning was entitled to the entirety of her estate under the 2016 will if valid and treated as such. The estate will not have been distributed to third-party beneficiaries.
10. Fourthly, the allegations on which Ms Smith's case is made essentially relate to the conduct of Mr Ganning himself in attending to the execution of formalities rather than the conduct of third parties or the acts of solicitors.
11. Ms Smith has sued Mr Ganning as sole defendant, notwithstanding that, if she is correct in maintaining that Mrs Ganning died intestate, her brother, Mr Robert William Evans, is equally entitled to a share of Mrs Ganning's estate, subject to Mr Ganning's rights as surviving spouse. Under the law of intestate succession at the time of death, Mr Ganning will be entitled to her personal chattels, as defined in section 51 of the Administration of Estate Act, so as to include, for example, motor cars and accessories, furniture, linen, jewellery. He would be entitled to the statutory legacy of £250,000 and half of her residuary estate absolutely. Ms Smith and Mr Evans would then be entitled to the balance of her estate in equal shares.
12. When Mr Ganning took out a grant of probate, he certified Mrs Ganning's estate at a gross value of £564,000 and net value of £507,421. After deducting Mr Ganning's statutory legacy, the personal chattels and his half share of the rest of her estate, that is likely to leave no more than £60,000 each for Ms Smith and Mr Evans on a very conservative estimate of the likely value of the personal chattels. As it happens, I have not been provided with such an estimate.
13. The issue before me is whether Mrs Ganning's will was executed in accordance with the formalities of the Wills Act 1837. Section 9 of the Act provides that:

“No will shall be valid unless—

 - (a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and
 - (b) it appears that the testator intended by his signature to give effect to the will; and
 - (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
 - (d) each witness either—
 - (i) attests and signs the will; or
 - (ii) acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation shall be necessary”.
14. Mr Gosling on behalf of Ms Smith contends that her will was not executed in accordance with the statutory formalities because she made it in the presence of one witness only, that is Ms Kathryn Weaver, and whilst another witness, or purported witness, Ms Dawn Wilson has added her signature in the section of the will allocated for witnesses, it is said that she did not witness Mrs Ganning's signature. Nor indeed did Mrs Ganning ever acknowledge her signature to her. On that basis, Mrs Wilson would not have been a witness to the will, and it

would be void for want of compliance with the statutory formalities.

15. I have heard the testimony of several witnesses. Whilst Ms Smith herself, Mr Evans and Mr Gary Fisher all gave evidence, their evidence was only of limited assistance to me on the critical issues in the case since none of them were present when the will was executed. Their evidence pertained only to issues of credibility in the overall context of the dispute.
16. Mr Evans and Mr Fisher were not cross-examined at any length. I am satisfied that they were honest witnesses. I was certainly provided with no reason to suggest otherwise.
17. As a witness, Ms Smith was argumentative and her account in some respects was tendentious. She repeatedly made extravagant allegations which she could not substantiate, for example, when cross-examined about the detail of her messages on social media from page 90 of the bundle, including a suggestion that Mr Ganning had spent £26,000 on a holiday to the Maldives, utilising funds from the sale of jewellery belonging to Mrs Ganning and herself notwithstanding that, if this is so and he was somehow able to realise £26,000 from the sale of jewellery, Mr Ganning was plainly entitled to sell at least his wife's jewellery in realising her estate. This is so even on the hypothesis that she died intestate in which case he would be entitled to her personal chattels as her surviving spouse.
18. Dawn Wilson was one of the two witnesses named in the 2016 will. She resides next door to Mr Ganning, or at least did so at the time of the 2016 will. When she made her witness statement on 13 October 2021, she lived next door. She had known Mrs Ganning for some 30 years prior to her death.
19. Not surprisingly, when cross-examined she could not recall the precise date on which she signed the will as a witness. In her witness statement she surmised it may have been the day on which Mrs Ganning signed the will. Before me she confirmed that Mr Ganning called her and, at his request, she came to his house next door, and she signed the will in his kitchen. Mrs Ganning was not present - no doubt because she was in hospital at the time - indeed, no one was present other than Mr Ganning and herself. She also said that she did not read the will before signing it because she regarded it as a personal and private document. This included the words immediately above her signature. She confirmed that, when she signed the will, she could see Catherine Weaver's signature had already been entered.
20. When Mr Ganning put it to her that she signed it with a special pen that she used for signing documents on occasions like this, she answered - incredulously - that she does not have such a pen and would not have any need for it. In answer to an increasingly inventive set of questions, she confirmed that, whilst employed in marketing, her role is in the art department of her employer.
21. Following the occasion on which she signed the 2016 will as a witness, Mrs Wilson gave evidence that she saw Mrs Ganning on only one occasion. That was at St Ann's Hospice shortly before Mrs Ganning died. On that occasion she says there was no mention of the will.
22. In cross-examination, Mrs Wilson accepted that, prior to this, she had visited the Christie Hospital with Mr Ganning on one occasion but she confirmed that that was not the occasion on which she signed the will.
23. Having heard Mrs Wilson give evidence, I am satisfied she was an honest and reliable witness, doing her best to remember events that occurred almost six years ago. Not surprisingly, she could not remember the precise date or dates on which the relevant events occurred, but she had a clear recollection of the circumstances in which she signed the will, and she was adamant that it was not in the presence of Mr Ganning.

24. She is, as Mr Gosling submitted, an independent witness. There is no reason to suggest that she stands somehow to benefit from the litigation. I am satisfied she gave an accurate account and that I can rely on her evidence.
25. Ms Smith also called Miss Kathryne Weaver to give evidence. She gave evidence this morning in which she confirmed that Alison signed the will in her presence and she signed the will herself on the occasion of her visit to the Christie on 5 April 2016. She confirmed that there were only three people present at the time, that is Mrs Alison Ganning, Mr Ganning and Miss Weaver herself.
26. Consistently with this, she confirmed that Mrs Wilson was not present at the time and the space for her signature was empty. While she confirmed that she was acquainted with Mrs Wilson as a neighbour of Mrs Ganning, she has not seen her since the funeral and has never spoken to her - she says - about Mrs Ganning's will.
27. As with Mrs Wilson, Miss Weaver is an independent witness and there is no reason to believe she stands to benefit from the proceedings. Her evidence was clear and unequivocal, and I am satisfied that she gave an honest and accurate account.
28. In contrast, whilst Mr Ganning did not issue the proceedings, he plainly does stand to benefit if the claim is successfully resisted. In his witness statement dated 12 December 2021, his account of the meeting at which the will was signed was surprisingly brief.
29. He asserts, simply, in paragraph 10 of his statement that "the will of Alison was signed by Alison and the two witnesses on the evening of 5 April 2016 at Christie's Hospital" and, later in paragraph 11, he states that it is his belief the will was executed in the correct manner. In his case before me has been presented on the basis that the will was executed by Mrs Ganning in the presence of himself, Catherine Weaver and Dawn Wilson, and that Catherine Weaver and Dawn Wilson then signed as witnesses.
30. Mr Ganning presented his case in a skilful and articulate way. However, he had a tendency in cross-examination to use it as an opportunity to argue his case. Having heard his evidence and contrasted it with the evidence of Mrs Wilson and Miss Weaver, I prefer their evidence to his.
31. Firstly, unlike him, they were independent witnesses with no interest in the outcome of the case. They were clear and consistent in their factual testimony about the critical issue in the case; that is the circumstances in which the will was signed and witnesses. There is nothing to suggest, and it is inherently unlikely, that they have colluded with one another or indeed with Ms Smith.
32. Secondly, whilst the testimony of Mr Ganning in his witness statement was short and lacking in detail, the observation implicit in his statement, that the two witnesses signed in each other's presence at the same time, is inconsistent with the account he gave in a telephone conversation with Ms Smith on 14 September 2017.
33. In that conversation, when asked whether they witnessed it at the same time, he replied "No, at different times". The course of questioning is as follows:

Ms Smith asked, "Can I also ask why was the will made out a week before me Mum died?"

Answer, "What's it matter to you?"

She says, "Um, well a lot".

He says, “Why?”

She says, “Cause she didn’t write it”.

Reply, “Course she did”.

She says, “No she didn’t”.

His reply was, “It was written and witnessed for her”.

She asks, “By?”

Reply, “Dawn and Cath.”

She asks, “At the same time?”

Reply, “No, at different times”.

At that point she laughed, and he asked, “What’s your problem, Laura?”

34. In cross-examination Mr Ganning suggested that his answer “No, at different times” was an answer to a question as to whether it was written and witnessed for Mrs Ganning at the same. Whilst it is true that the original question was as to whether it was written and witnessed for her, having heard the taped conversation, I am satisfied that he was unambiguously stating it was witnessed by Dawn and Cath at different times, and it is to his discredit that he suggests otherwise. More generally, I am satisfied that in the overall context of the evidence as a whole, the evidence of Mrs Wilson and Miss Weaver on the critical issue of execution is more plausible than the evidence of Mr Ganning.
35. Mr Gosling reminds me that, in the case of a will duly executed on its face, there is a presumption of due execution. He is right to do so. However, in view of the clear and unambiguous testimony of the two witnesses, Mrs Wilson and Miss Weaver, I am satisfied that the presumption has been successfully rebutted in the present case.
36. I am thus satisfied that Ms Smith has established her case in relation to the execution of the 2016 will. It was signed first by Mrs Ganning in the presence of Miss Weaver and Mr Ganning at the Christie Hospital. Mr Ganning then brought it home, called Mrs Wilson, and she signed it in his kitchen at home. Mrs Wilson was not present when Mr Ganning signed the will and Mrs Ganning did not acknowledge her signature to her before her death. When Mrs Wilson signed the will, Mrs Ganning was not present.
37. On this basis, the 2016 Will was not executed in accordance with the formalities of the Wills Act 1837 and the will is void.
38. In those circumstances, I shall pronounce against the validity of the 2016 will and make an order providing for it to be revoked. In the absence of evidence Mrs Ganning made any other will that was not itself revoked when she married Mr Ganning, she died intestate. I shall make a determination to that effect.
39. It is provided by Rule 19.8(a)(8) of the Civil Procedure Rules that:
- “Any person served with a notice of a judgment or order under this rule –
-
- (a) shall be bound by the judgment or order as if he had been a party to the claim; but
- (b) may, provided he acknowledges service –
- (i) within 28 days after the notice is served on him, apply to the court to

set aside or vary the judgment or order; and

(ii) take part in any proceedings relating to the judgment or order”.

40. On this basis there shall be a direction in the order providing for Mr Evans to be served with notice of the judgment under the provisions of Rule 19.8(a)(8). There should be provision for him to apply, if so minded or advised, to set aside or vary the order on notice.
41. However, I shall not make an order today providing the appointment of the new personal representative. I shall simply adjourn this part of Mr Gosling’s application for a further hearing.
42. Given the nature of their relationship and the animosity displayed by Ms Smith to Mr Ganning when she gave her evidence and the patterns of her correspondence on social media, and also the steps taken by Mr Ganning himself to obtain probate of an incorrectly executed will, I am not satisfied it would be appropriate for me to make a grant of letters of administration to either of them. Any issue as to the identity of the personal representative to be appointed will have to be adjourned. I propose at the moment, Mr Gosling, to make no order in relation to the rest of your case.

End of Judgment

Transcript from a recording by Ubiquis
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