



Neutral Citation Number: [2024] EWHC 1177 (Ch)

Case No: PT-2020-CDF-000038

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
PROPERTY AND TRUSTS LIST

Cardiff Civil Justice Centre
2 Park Street, Cardiff CF10 1ET

Date: 17/05/24

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court

Between :

VANESSA JEAN DAVIES
- and -
(1) BARBARA ELEANOR WATTS
(2) MARY GWENLLIAN DAVIES

Claimant

Defendants

Mr Emyr Jones (instructed by **H Vaughan Vaughan & Co**) for the **claimant**
Mr Martin Young (instructed on direct access) for the **first defendant**

Hearing dates: 13 and 14 May 2024

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE JARMAN KC

HHJ JARMAN KC:

Introduction

1. On 14 December 2018, when he was 74 years old, Philip Price signed a hand written will prepared by Sian Morris, a solicitor, leaving his estate to the claimant Vanessa Davies and appointed one of his many cousins, the second defendant Mary Davies, to be an executor and trustee of his will. Vanessa Davies seeks to prove the will in solemn form but that is disputed by the first defendant, Barbara Watts. She is the half-sister of Philip Price, but only found out this after his death on 10 January 2019, and would stand to inherit his estate if his will is found to be invalid. She claims that he did not have testamentary capacity at the time of executing the will, or did not know or approve of its contents.
2. The estate consists of Middle House Farm, Tredomen, Powys which comprises a house and some 74 acres of pasture, where Philip Price lived all his life and which was very dear to him. He kept Shire horses and Shetland ponies there, and let the remainder out as grass keep. He also had a vintage gun collection, valued for inheritance tax purposes at over £70,000, money in bank and building societies at nearly £135,000 and shares at over £50,000. His net estate was valued for such purposes as some £808,000.
3. By the will, the farm and land were left to Vanessa Davies absolutely, as were as his “three shire horses and twelve Shetland ponies” with a direction that they be “kept together if possible.” Subject thereto and to debts taxes and expenses the whole of the estate was given to Vanessa Davies “to retain or distribute as she shall in her absolute discretion think fit.”
4. He and Vanessa Davies had been close friends for some 25 years. Just how close was the subject of some dispute in the evidence before me and that is an issue to which I shall shortly return.
5. The will was signed just a day or so after he had spent some 10 days in hospital suffering from pneumonia and possibly sepsis. He had an underlying auto immune condition known as Vasculitis. Some months earlier he had had surgery to remove a growth on his face and he was diagnosed with metastatic skin cell carcinoma. From the summer of 2018 he became increasingly weak and frail. He travelled regularly down to Cardiff to have chemotherapy and when that was not effective, he had experimental treatment. That was not effective either and the treatment stopped by the end of November that year.
6. On 2 December following he was taken to Neville Hall Hospital, Abergavenny where he was found to be suffering from pneumonia and possibly sepsis. The medication he was prescribed included opioids. A day or so afterwards, he suffered from acute serious delirium, which continued until the next day. He suffered a further episode at the end of December and in early January. There is no indication in the medical notes that the delirium continued in between these episodes or was present at the time he signed his will.

Witnesses

7. Both sides instructed eminent psychiatrists in old age who each produced a report and a joint statement. Neither met or was involved in the treatment of Philip Price and each relied upon his medical notes and witness statements produced in these proceedings by those who knew him well. There is not a great deal of disagreement between the experts. Professor Burns, for Barbara Watts, accepts that there is no medical evidence of continuing delirium after 6 December but is of the opinion that it is possible that this was continuing on 14 December and that if so it could have undermined testamentary capacity. Dr Series, for Vanessa Davies, is of the opinion that although it is possible that delirium was continuing at the time of making the will, this is the less likely scenario. Even if it was, his opinion is that it is more likely than not that this was mild and it is unlikely that this would have undermined testamentary capacity.
8. One of the main points relied on by Mr Young on behalf of Barbara Watts as to want of knowledge and approval of the contents of the will was a difference between a handwritten attendance note which Sian Morris took at the time and the way this was reflected in the will which she then wrote out in hand. The note indicated that after dealing with the farm, land and horses, the discussion then turned to the guns and the residue. The note records this:

“Large antique collection of firearms. About to dispose of.
100K. May think about bequests of these or make lifetime gifts.
Still thinking about what to do with everything. Discussed.
Left-residue to distribute to VJD to distribute as thinks fit.”
9. Mr Young points to the fact that the will as then drawn refers not just to distribution, which appears to be a solution prompted by Sian Morris in light of Philip Price’s indecision on this, but to retention. Sian Morris, who is a senior solicitor with many years of probate experience, was called to give evidence by Vanessa Davies. She said that was a standard clause, and that she went over the draft will two or three times with Philip Price and then gave it to him to read before he signed it. There was no one else in the room at that time. The will was then signed by him in her presence and that of a neighbour who both then signed as witnesses. I accept that part of her evidence, which was uncontroverted.
10. The other witnesses called on behalf of Vanessa Davies, were her son Rhodri, and friends who knew Philip Price well. Robert James, John Price and Roger Williams knew him from school or childhood, lived nearby to Middle House Farm and were still meeting him frequently until very shortly before he died. John Evans shared his interest in antiques, attended sales and fairs with him, and carried on seeing him after his discharge from hospital. Hayden Lavin served in the police with him at Bulth Wells from 1990 and from 2010 met him frequently through their mutual interest in horses and helped look after his horses when he became too weak to do so. He last saw him a couple of days before he passed away.
11. Barbara Watts gave evidence but had no direct knowledge of him because one of the sad aspects of this case is that she did not find out that she was his half sister until after he had passed away. Mary Davies is a defendant in this case as executor, but the case against her has been stayed pending a decision as to the validity of the will.

However, she gave evidence on behalf of Barbara Watts, as did Edwina Gatehouse, a solicitor with whom she had made appointments in October 2018 at his request for him to sort out his affairs but which appointments were cancelled because of his failing health. A statement from another cousin of Philip Price, Janet Turner, was adduced under the Civil Evidence Act 1995 on the basis that she was not well enough to attend. There was no medical confirmation of that, and I give it due weight. She visited Middle House Farm frequently as a child, and yearly in adulthood after she had moved to the South of England.

Philip Price and Vanessa Davies

12. A clear picture of Philip Price's character emerged from all of the evidence. After a spell in the Merchant Navy upon leaving school, he became a police constable stationed in various towns in Mid Wales. After he retired from the police he worked for the Probation Service. He was the only child of his parents who bought him up on Middle House Farm. He did not marry and did not have children. He had many friends and cousins. He was well thought of by all who knew him, as independent, private about his own life but interested in other people, and passionate about his farm, horses, guns, rugby, wildlife, local history and other community activities. He had a keen sense of humour and a dry wit and would pull people's legs. He did not farm himself but kept his horses there and let out the remainder for grass keep, including to Robert Williams.
13. He and Vanessa Davies had been friendly for some 25 years before his death, after her husband passed away. She lives some 10 minutes away in Brecon. She has a daughter who lives in Crickhowell. Her son Rhodri lives in Hertfordshire and there are three grandchildren. She and Philip Price retained their own homes throughout their relationship, but stayed with each other on occasions and went on holiday together, as well as other outings such as Welsh Rugby Union internationals in Cardiff.
14. As the issue of the closeness of this relationship is a central issue in the case and obviously important to Vanessa Davies, I will deal with this issue at the outset. She described herself as his partner and their relationship as intimate. Her son was called as a witness on her behalf who regarded his mother and Philip Price as partners and said that he and his family would visit them in Mid Wales about four times a year and they would visit him about twice a year. They both attended the weddings of Vanessa Davies' children, when he jokingly described himself as step father in law of the bride. They attended other family occasions and also shared a holiday with Rhodri Davies and his wife.
15. This had support from Philip Price's friends in their written or oral evidence. Robert James referred to Vanessa Davies as his partner and referred to them as a couple. John Evans said that the couple came together to his family events. Haydn Lavin described them as very close and he met them on several occasions. He said that Philip Price spent time with Vanessa Davies and her family. John Price said that he was back and forth between Middle House Farm and Vanessa Davies' bungalow.
16. A very different picture was painted by Mary Davies in her detailed witness statement. She grew up with Philip Price but then worked away, although she retained her home in Brecon. On her retirement she reconnected with her cousin from about 2014. She accepted in cross-examination that she thinks that his estate should be kept

in the family and that Barbara Watts “is now my family,” but that Vanessa Davies is not. She said that in October 2018, he asked her to be his executor and handed her the deeds of the farm which gave her the impression that it should be kept in the family. He didn’t say anything about his wishes in this regard, although she was hoping that he would.

17. In her statement she said that she did not hear her cousin talk of Vanessa Davies, and there is limited support for that in the statement of Janet Turner, although she was an infrequent visitor. Mary Davies also said that her cousin only moved in with Vanessa Davies in November 2018, whereas the latter says it was in March 2018. In cross-examination she said that the two were “just friends” although she accepted that Vanessa Davies was very good to her cousin and cooked for him. She denied that they were a couple, and when it was put to her that she would never accept that they were, she agreed that was fair to say. She then asked rhetorically “why didn’t they live together and be a couple” and added that unless there is co-habitation then it is a case of “just good friends.”
18. In my judgment that reveals an outdated and narrow minded perception of the range of human relationships. In fairness, Mr Young in his closing submissions on behalf of Barbara Watts accepted that the evidence as a whole showed that the two had a close friendship and companionship, were seen as a couple and that they shared their lives as close companions. I accept that, and also that the two were a couple. To the extent that the evidence of Vanessa Davies and her witnesses differs from those of Barbara Watts, then in my judgment the former is likely to be a more accurate perception and recollection than the latter, including the date when Philip Price moved into her bungalow.

The making of the will

19. I turn now to deal with the making of the will. As indicated, appointments had been made with Edwina Gatehouse in October 2018 for Philip Price to put his affairs in order, but those were cancelled and the two had no further connection. Mary Davies says that when she was visiting him towards the end of his stay in hospital they had another conversation about putting his affairs in order, and she raised the issue of having a doctor at the hospital to say that that was okay. She added that although he knew what he wanted and wanted to put his affairs in order, he did not want a doctor involved. Vanessa Davies also says that he asked her to arrange for a solicitor and that she asked her son to attend to this, as she was busy doing washing and going to the farm to attend to the horses. Rhodri Davies confirms this request and that he phoned the local firm of Jeffreys and Powell in Brecon, although he can’t remember much of the conversation.
20. Sian Morris, who is a senior partner in that firm, recalls the receptionist putting his call through as from Rod Davies, whom she did not know, and who said he was calling for his mother and a friend who was very ill and hoping to come out of hospital and wanted to give her instructions urgently. She attended him at Vanessa Davies’ home on the morning of the 14 December. She would normally take a cashier with her in case anything needed witnessing but the office was busy so she did not. After introductions she was left alone with Philip Price, whom she knew from working in the local magistrates courts. The meeting lasted about 1 hours and 10

minutes, and her handwritten note is only a nutshell. She dictated a fuller note the following week.

21. She said that they chatted about many things including his gun collection. The details about that, the farm, the horses, and bank accounts were given to her by him. He seemed confident about the number of horses he had. He also mentioned that he had 45 cousins, which was referred to in the typed note but not in the handwritten note. This was in the context that there would be chaos if he didn't make a will and his estate had to be shared between them. It was put to her in cross-examination that he had only some 17 cousins so that this shows he could not remember how many he had. She replied that this was said jokingly. When the number of cousin was put to Mary Davies, she appeared to have trouble in recalling how many cousins there were. I accept the evidence of Sian Morris thus far, including that he joked about the number of cousins. It is likely that he did so by way of emphasis as to how difficult his estate would be to administer if he did not make a will.
22. Sian Morris continued that he was initially uncertain about what to do with the residue of the estate. She told him that if he was going to deal with everything in his will he would have to set out who got what, otherwise there may be a partial intestacy, to which he replied "Oh I see" or "I understand." She then said that one idea may be to give it to someone to distribute as they saw fit. She got the impression that he had or would discuss this with Vanessa Davies. However, he was clear that he did not want cousins to inherit, and wanted the will done there and then. After she drafted it she went through it with him, probably not more than twice, and then gave it him to read. I accept this part of her evidence.
23. She was asked in cross-examination why she hadn't taken the precaution of obtaining medical confirmation of capacity. She said that she did not feel that his capacity was in any way compromised, and that it was a sort of sixth sense. She added that if, as here, the person was ill, she would sit and let them talk and talk to them. If she felt there was an issue regarding capacity she would have obtained medical assessment but she found that there was none here. I accept that that was her thought process. The question remains as to whether in fact he had testamentary capacity at the time.

Legal principles

24. There was no dispute before me as to the principles to be applied to answer that question, or whether Philip Price knew and approved of the contents of his will. The principles to be applied in determining whether someone has testamentary capacity are well established. Cockburn CJ in *Banks v Goodfellow* (1870) LR 5 QB 549 held that it is essential to the exercise of a power of disposition by will that a testator:

“[a] shall understand the nature of the act and its effects; [b] shall understand the extent of the property of which he is disposing; [c] shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, [d] that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties...”

25. In *Key v Key* [2010] EWHC 408 (Ch), [2010] 1 WLR 2020 Briggs J, as he then was, summarised the burden of proof in relation to this issue at [97]. The burden starts with Vanessa Davies to establish capacity. However, where the will is duly executed and appears rational on its face, then the court will presume capacity, in which case the evidential burden shifts to Barbara Watts to raise a real doubt about capacity. If there is such a doubt, the evidential burden shifts back to Vanessa Davies to show capacity.
26. In *Simon v Byford* [2014] EWCA Civ 280, the Court of Appeal upheld a finding that a testator with mild to moderate dementia nevertheless had testamentary capacity. At [39] of the lead judgment of Lewison LJ, he emphasised that what is important is capacity, that is, potential. He cited Peter Gibson LJ in *Hoff v Atherton* [2004] EWCA Civ 1554 at [34]:
- “If there is evidence of actual understanding, then that would prove the requisite capacity, but there will often be no such evidence, and the court must then look at all the evidence to see what inferences can properly be drawn as to capacity. Such evidence may relate to the execution of the Will but it may also relate to prior or subsequent events.”
27. Lewison LJ observed later in his judgment that capacity depends on the potential to understand. It is not to be equated with a test of memory. At [45], he said this:
- “I do not believe that previous authority goes to the length of requiring an understanding of the collateral consequences of a disposition as opposed to its immediate consequences. Nor do I think it desirable that the law should go that far.”
28. In order to avoid disputes on such capacity, where an elderly or seriously ill person wants to make a will, a solicitor should follow what has become known as the "golden rule." It has been emphasised that this is not a rule of law but rather a guide to avoiding disputes; see *Burns v Burns* [2016] EWCA Civ 37 at [47]. The rule was summarised in *Key* at [7] as follows:
- "The substance of the golden rule is that when a solicitor is instructed to prepare a will for an aged testator, or for one who has been seriously ill, he should arrange for a medical practitioner first to satisfy himself as to the capacity and understanding of the testator, and to make a contemporaneous record of his examination and findings..."
29. As for knowledge and approval the question is whether Philip Price understood what was in the will when he signed it and what its effect would be, see Lord Neuberger MR in *Gill v Woodall* [2010] EWCA Civ 1430 at [22].
30. In *Symons*, Lewison LJ said this at [47]:
- “The reason for this requirement is the need for evidence to rebut suspicious circumstances: *Perrins v Holland* [2010] EWCA Civ 840; [2011] Ch 270 at [25]. Normally proof of instructions and reading over the will will suffice: *ibid* at [25]. The correct approach for the trial judge is clearly set out in *Gill*

v Woodall [2010] EWCA Civ 1430; [2011] Ch 380. It is a holistic exercise based on the evaluation of all the evidence both factual and expert. The judge's starting point in our case was one of "initial suspicion", given that the disputed will was prepared and executed without a solicitor and without Mrs Simon having been medically examined: see [11]. But having heard the evidence he held that his initial suspicion had been dispelled. He found it clear that Mrs Simon knew that she was making a will, took a conscious decision to make it and approved its terms. This conclusion was, in my judgment, fully supported by the evidence that the judge accepted."

Did Philip Price have testamentary capacity?

31. Applying those principle to the facts of this case, I accept that the will was duly executed and, given my findings as to the relationship between Philip Price and Vanessa Davies, it was rational on the face of it. However, given the possibility that there was continuing delirium at the time of execution, and Professor Burns' view that that could have undermined capacity, it is not appropriate to rely on the presumption in this case. Regard must be had to the evidence. In in his report, Professor Burns says this:

"17.2 If the description of Mr. Price by Mary and the list of errors it is said that Mr Price made in giving instructions for his will (for example saying he had 45 cousins) are accepted by the Court, this would be consistent with Mr. Price still experiencing symptoms of delirium which would cast doubt on his testamentary capacity. However the observations of Ms Morris and the number of witnesses for the claimants would suggest, if accepted by the Court, that Mr Price retained testamentary capacity.

17.3. The medical evidence can only go so far in this case. I think the Court will have to rely on the non-medical evidence and the witness statements, which provide different accounts of Mr. Price, to reach its conclusion"

32. I have already made a finding as to the reference to 45 cousins and that finding means that that reference does not assist on the issue of capacity. As recognised by Professor Burns, there is a stark difference between the statements of Vanessa Davies and her witnesses on the one hand, and that of Mary Davies on the other. Each of these were tested robustly in cross-examination. There is no dispute that at the time of making the will, Philip Price was very weak and very frail, and that his voice too was very weak.
33. The evidence of Vanessa Davies and her witnesses was consistent, that despite his physical frailty, he remained mentally very sharp. This is also consistent with my finding that the information as to his assets and potential beneficiaries in Sian Morris' written attendance note came from Philip Price, and, subject to two further points which I shall come to, was accurate.

34. Vanessa Davies says that after the episode of delirium, he rang her to tell her about this and that he was hallucinating that he was on a boat. She saw him every day in hospital and says that apart from the episode of delirium he was not confused and they had good conversations, in which he would ask how his horses were and what was going on in the village. This is supported by John Price, who happened to visit him whilst he was hallucinating, which was concerning. However, according to John Price, three days later he was fine and recalled that he had been hallucinating which involved seeing badgers at the bottom of the bed. During subsequent visits, he was lucid and chatty and asking about John Price's family. The latter took him newspapers to read as he was an avid reader, and visited him regularly after discharge at the home of Vanessa Davies up until the day before he died.
35. Robert James also visited him after discharge and says that on 6 January 2019 he spent three hours with him when he looked poorly but chatted perfectly normally. He talked about booking various Welsh Rugby Union international matches and gave the impression that he would be going to them. He grew tired towards the end of this visit and said "Push off James" (which is what he called him) "or I'll throw you out," to which the reply was "I wish you had the strength to do it."
36. Roger Williams also visited him after discharge, when there were discussions about renewing their grass keep agreement. One such visit was the day before he passed when he told Roger Williams, as he recalls, to instruct the letting agents McCartneys to draw up an agreement on the same terms as the previous year. Roger Williams says that he was not confused or muddled in any way, and although physically weak retained his character and his sense of humour. John Evans also visited after discharge and it didn't occur to him at all that he was confused. Haydn Lavin during this time was helping to look after the horses and would call to see him to tell him that everything was alright with them. On one such visit, a couple of days before he passed away, he was sleeping and was woken up by Vanessa Davies. The first questions he asked on seeing his visitor was how were the horses and did they have plenty of hay. Haydn Lavin says that he was very frail but that his "mind was as sharp as a pin."
37. The impression given by Mary Davies in her witness statement is very different. She visited her cousin in hospital in the afternoons. She says in her statement that she was told by medics at the hospital that the hallucinations would continue. There is no suggestion of this in the medical notes and when she was asked about this in cross-examination she hesitated before saying that if that was what was in her statement then it must be accurate. In my judgment it is likely that had she been told this, there would have been some support in the notes and accordingly her recollection is not accurate on this point.
38. Her statement also says that after discharge she continued to visit him, including on the afternoon of the day when he had made his will. She acknowledges that Vanessa Davies told her about the will, and says that on seeing her cousin, he was "wiped out" and "completely out of it." She didn't think he recognised her and didn't see any sign of connection.
39. Under cross-examination, she was asked more than once whether she thought he was confused at this point. She stopped short of saying that he was, and to her credit accepted that as she had not seen him in the morning she couldn't say whether he was lucid then or not. She appeared to accept that he did recognise her. She referred

instead to his physical weaknesses. She said that most of the time she visited him he was sleeping or didn't say much. She said that he could not remember the names of other patients or where they came from.

40. It would be surprising if she thought that her cousin did not have capacity given that she instructed solicitors after her cousin's passing who wrote to solicitors acting for Vanessa Davies raising a number of matters about the administration of the estate but not mentioning lack of capacity. Probate forms and tax forms were completed on her behalf on the basis that there was a will. She was asked in cross-examination why she accepted the executorship if she didn't think her cousin was of sound mind. She replied that she had never been an executor before, which was not a complete answer to the question. It was then put to her that she did so because she wanted to undermine the will, which she denied. That is not a determination I need make to deal with the issues before me, but I am satisfied that she acted after her cousin's passing on the basis that his will was valid.
41. The two further points relied upon on behalf of Barbara Watts to show lack of capacity and/or lack of knowledge or approval, relate to her existence and the ownership of two of the Shetland ponies at the farm at the time of making the will. There is no suggestion that Philip Price knew of her or that she was his half-sister. The highest it was put was that there were rumours in the village that he might have one, from which it may be inferred that he had heard the rumours. Vanessa Davies says that Mary Davies told her of the rumours in November 2018, but that she did not tell Philip Price of them. Other local witnesses such as Robert James, Roger Williams and John Price say they had not heard the rumours and that he had never mentioned a half-sister to them. In my judgment, even if some people did hear the rumours, it is unlikely that anyone would have raised such a sensitive issue with him, given that he was such a private person. The fact that he did not mention this to Sian Morris is likely to be due to his ignorance of the relationship, just as Barbara Watts did not know of it until after his days.
42. It is not in dispute that two of the Shetland ponies mentioned in the will had been neglected and abandoned and were brought to the farm to be cared for. Whilst he had passports for the others under the Equine Identification (Wales) Regulations 2009, current at the time, there were no such passports held by him for these two ponies. Under the regulations, such a passport is required for the transfer of ownership of such ponies and penalties are imposed for failure to have one. There was no evidence before me whether passports for these ponies were ever in existence, but it was submitted that as a law abiding person Philip Price would not have claimed ownership of these two without a passport, and the fact he included them in his will shows a lack of capacity and/or want of knowledge or approval.
43. Given his physical illness, in my judgment this oversight is hardly surprising. In any event this is not sufficient to outweigh the clear and straightforward evidence of capacity which Vanessa Davies and her witnesses give and which I accept. Insofar as the evidence of Mary Davies and Janet Turner differ on these points, then I prefer the evidence of the former. The evidence of Mary Davies was less clear and less straightforward in the ways indicated above. The evidence of Janet Turner was far more remote.

Knowledge and approval

44. Accordingly in my judgment it has been clearly shown that Philip Price had testamentary capacity. That finding goes a long way in dealing also with the question of whether he knew and approved of the contents of his will. It was written in clear capital letters on one page. Its terms were not complex. I accept the evidence of Sian Morris that she went through its terms with him, probably twice, and then gave it to him to read, before it was executed. The phrase “retain or distribute” in respect of the residue was clearly written in plain language. In my judgment it is clear that he knew and approved of its contents.

Conclusion

45. Accordingly the claim succeeds and the counterclaim is dismissed. I indicated at the end of evidence and submissions that I intended to send out a draft of this judgment on Thursday 16 May 2024 and then hand it down at 2pm on Friday 17 May. Counsel helpfully indicated that in that event they would inform the court on morning of 17 May at the latest, whether they wished to attend the hand down to deal with consequential matters or whether those could be agreed. I am grateful to counsel for their assistance.