

[2019] UKFTT 0092 (PC)

**PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

**REF No 2017/0177
BETWEEN**

KENNETH RICHARD DUNKLEY

Applicant

and

BEVERLEY ROBERTSON DUNKLEY

Respondent

**Property: 48 North Avenue, Letchworth Garden City, Hertfordshire
Title Number: HD553769 and Caution Title HD552980**

**Before: Judge McAllister
Field House, London
23 and 24 October 2018**

Representation: Mr Palfrey of Counsel instructed by Woodfines appeared for the Applicant; Mr Davies of Counsel instructed by Premier Solicitors appeared for the Respondent

DECISION

Introduction

1. By a conveyance dated 15 September 1978 between Letchworth Garden City Corporation as vendors and Jack and Kathlyn Robertson as purchasers the property at 48 North Avenue, Letchworth Garden City ('the Property') was conveyed to Mr and Mrs Robertson. On the same day the Property was further conveyed to their daughter, Gillian Dunkley and her husband, Kenneth Dunkley. By clause 3 of that conveyance

Mr and Mrs Dunkley declared that the Property was held by them as joint tenants. The Property is unregistered.

2. At the time of the purchase of the Property, Mrs Dunkley had a daughter, Beverley, who was then 4 years old.
3. For ease of reference, and not intending any disrespect, I will refer to the various family members by their first names.
4. In July 2015 Gillian was diagnosed with terminal cancer. It is Beverley's case that, on or about 3 August 2015, her mother, having obtained legal advice, severed the joint tenancy by giving a notice ('the Notice') to that effect to Kenneth.
5. On 3 August 2018 Gillian made a Will appointing Beverley to be the executrix and trustee of her Will, leaving all her property to Beverley.
6. In December 2015 Gillian and Beverly made a complaint to the police about historic sexual offences committed by Kenneth against Beverley.
7. On 27 January 2016 Gillian executed a deed ('the January 2016 Deed') assigning her beneficial interest in the Property to Beverley.
8. Gillian died on 2 April 2016. On 25 April 2016 Beverly registered a caution against first registration on the grounds that the Property was held by Kenneth and Beverley (as her mother's executrix) as tenants in common.
9. On 24 May 2016 Kenneth applied for first registration of the Property on the basis that he is the sole legal and beneficial owner.
10. On 29 July 2016 probate was granted to Beverley. On 18 October 2016 she objected to Kenneth's application proceeding without entering a restriction on the title, on the grounds that, the joint tenancy in the beneficial estate had been severed, and the legal estate is held by Kenneth on trust for Beverley and Gillian's estate. Kenneth denied that the Notice had been served on him on or about 3 August 2015
11. On 9 February 2017 the matter was referred to the Tribunal.

12. On 24 March 2017 Kenneth pleaded guilty to 16 charges, including three charges of rape, three charges of indecent assault and charges of making indecent photographs of a child and possessing indecent images. He was sentenced to 12 years imprisonment. The complainant, in relation to the rape and assault charges, was Beverley.
13. The matter came before me on 23 and 24 October 2018. Kenneth gave evidence via video link from HMP Littlehay.
14. For the reasons set out below I find that the joint tenancy was severed by the service of the Notice, and I will order the Chief Land Registrar to give effect to Kenneth's application for first registration subject to restrictions being entered to protect Beverley's beneficial interest.

The Respondent's Case

15. Beverley's primary case has at all times been that her mother served the Notice on Kenneth on about 3 August 2015.
16. In his skeleton argument and at the hearing Counsel for Beverley raised an alternative argument. He submitted that in any event the January 2016 Deed effected a severance. Counsel for Kenneth rightly accepted that the execution of this deed severed the joint tenancy as a matter of law.
17. In the event, therefore, the position is that the joint tenancy held by Gillian and Kenneth was severed by the January 2016 Deed if, contrary to Beverley's primary case, it was not severed by the Notice.
18. In one sense this development disposes of the issue in the case. However, as the case proceeded on the factual basis whether or not the Notice was served on or about 3 August 2015, and as the decision on this point may be relevant in other ways, I will deal with this point.

Service of the Notice and subsequent events

19. Beverley's evidence was as follows. Her grandparents bought the Property from the Letchworth Garden City Corporation when Gillian was diagnosed with multiple sclerosis with a view to transferring it immediately to her and their son in law. Beverley lived at the Property with her mother, her brother Justin and Kenneth.
20. She described Kenneth as a violent and abusive man, who assaulted and abused Gillian, as well as sexually abusing her from a young age.
21. Following her diagnosis of cancer in or about July 2015, Gillian decided that she would do all she could to ensure that her share in the Property was left to Beverley. On 23 July 2015 Beverley drove Gill to the offices of Michael Hall & Co (Michael Hall is a solicitor who practises as a Notary Public). On that occasion she saw Melanie Rowe and Caroline Tianio. Mr Hall (who gave evidence before me) attended that meeting very briefly to deal with the need to check the ownership of the Property on the Land Registry website.
22. The note made on that occasion records that Gillian, who was 66 and of good mental capacity, wished to leave everything to Beverley. She stated that she hated Kenneth; that he was spiteful and controlling; that he had abused Beverley in childhood and that she was sorry for this, and that she did not want to give any reasons for not leaving anything to him because she was frightened. Beverley was present at the meeting at her mother's request.
23. On 3 August 2015 Gillian and Beverley went back to Michael Hall & Co so that Gillian could sign her Will. There is a side note to the Will recording that Gillian had been advised that because no provision had been made for Kenneth, he might be able to challenge the Will and make a claim on the estate. The note ends by saying that she, Gillian, understood the advice she had been given but nevertheless wished her Will to stand with no provision made for her husband.
24. At this second meeting Gillian again confirmed that she wanted her daughter present. Michael Hall was also present. An attendance note made by him reads: '*Wanted to*

split the joint tenancy of house. Office copy entries. Drafted notice of severance. Signed and witnessed. Said I would post to husband but she said no, she would give it to him when the moment was right. Said she would get him to receipt form. Frightened of him. She ill used by husband, tears. Suggested she write details of problems with husband so there is a record.'

25. A handwritten statement dated 3 August 2015 setting out the reasons why Gillian did not want to leave anything to Kenneth was written by Beverley in the presence of Melanie Rowe on her mother's instructions, and was signed by Gillian. The statement gives a snap shot of her life with Kenneth. She wrote that Kenneth was a control freak. He controlled all aspects of her life, including her friends and her money. Gillian lived off her pension and DLA benefit. She had a Barclaycard but it was paid by him so that he could see what she bought. Gillian also wrote that Kenneth had abused Beverley sexually and physically between the ages of 7 and 14.
26. A further attendance note of the same meeting ends stating that Gillian was given a severance of joint tenancy form (the Notice) and noted: *'She did not want it posted as she had to choose the moment to give it to him [husband].'*
27. The Notice was signed by Gillian on 3 August 2015 at this meeting. A copy was held on the solicitor's files. It is in a standard form and states that *'I GILLIAN DUNKLEY of 48 North Avenue Letchworth Garden City.... Hereby give you notice that I do sever the joint tenancy that at present exists between us in respect of our joint ownership of 48 North Avenue... So henceforth this property is held by us as tenants in common.'* It is addressed to Kenneth Richard Dunkley and witnessed by Melanie Rowe.
28. In her witness statement Beverley stated that her mother had severed the joint tenancy on or about 3 August 2015. She also stated that her mother was adamant that she would serve it herself on Kenneth when he was in a good mood and less likely to be abusive. If the Notice were served by letter or by a process server, he would take out his anger on her.
29. In cross examination Beverley admitted that she could not say exactly when the Notice was served and that she was relying on paperwork. She also stated that she did not think it mattered when she gave it to him, but was certain this had happened. Her

mother told her she had done so, and also said that Kenneth was angry with her as a result. This was not surprising, she said, as there was often anger between them.

30. On Thursday 6 August 2015 Gillian and Kenneth attended the Imp Club car meeting in Darlington. They were long term members of the club. It appears from the booking form, and the evidence, that they remained there for the full four days. They paid a fee of £64.00 before the closing date on 24 July 2015. I heard evidence from Simon Benoy, a member of the Club who had known Gillian and Kenneth since the early 1990s through the membership of the Club. He stated that from what he saw he believed their relationship to be strong. He became aware, at the August 2015 meeting, of Gillian's deteriorating health issues.
31. Beverley was asked whether, if, as alleged, the Notice had been served on or about Monday 3 August, and Kenneth had reacted angrily, Gillian would nonetheless have gone to the club meeting. Beverley replied that she would certainly have gone, if nothing else to save face. She also stated that none of their close friends would have described Gillian as happy in her marriage, and that it was always easier to give in to Kenneth than to confront him. Her mother had no need to pretend with her: she did not need to keep her happy. The pretence, she said, was always with Kenneth.
32. The solicitors file notes record a further attendance by Gillian on 21 August 2015. This note was made by Mr Hall. Mr Hall had no independent recollection of the meetings with Gillian and her daughter, but relied on the various attendance notes kept. It is clear that he was in attendance on 3 August (and witnessed her Will), and gave her the Notice, and further that he saw her again on 21 August. I found Mr Hall to be a careful and scrupulous lawyer, and an entirely straightforward witness. In view of the volume of work undertaken by him, I do not find it surprising that he should not recall the various meetings when he came to give evidence.
33. Mr Hall's note shows that Gillian had attended without an appointment. She said she had given the Notice to her husband 'soon after the last meeting.' The note goes on: *'Evidently he glanced at it and then threw it away. He was then rude to her. I asked him if she could get him to sign a receipt but she said she would not dare. Told her she should make a statutory declaration proving service on her husband but she did not*

have the money to pay for it to be drafted and it was far beyond what she could do herself.'

34. A further and more detailed note was also made by Mr Hall on the same occasion, dealing mainly with the steps taken by Gillian to obtain a certificate of mental capacity from her GP. It is clear from this note that she could not pay to obtain a certificate privately because Ken controlled her bank account and her money.
35. Finally, on 21 August 2015, Gillian signed a statement of truth attesting to the fact that she had served the Notice on Kenneth on or about 3 August 2015.
36. Beverley could not recall whether she went with her mother on this occasion. She recalls taking her mother to various appointments and meetings, but could not recall the details.
37. Gillian continued to live at the Property after August 2015, although Beverley would spend more time with her there. One evening in November 2015 Beverley took her mother back to the Property after a Christmas's dinner. Kenneth was abusive to her when she returned, and banned Beverley from the house after Beverley confronted him with her childhood abuse. Gillian was suffering from a number of infections. She was admitted to hospital, and, on her discharge, went to live with Beverley and her partner. In December 2015 Beverley and her mother went to the police. Gillian never saw Kenneth again after 4 January 2016 because it was a condition of his bail that he not contact Gillian or Beverley. The last time he spoke to his wife was on 1 January 2016.
38. Gillian was in contact with Michael Hall & Co again in January 2016. By this time she had been in hospital for about a week and was very ill. She asked Beverley to make an appointment for her. Beverley called the firm twice. There is a file note referring (presumably to a telephone call) on 13 January 2016 when the question of the service of the Notice was raised. A further phone call took place on 18 January. This involved a discussion about the Property being unregistered and the possibility of the transfer of Gillian's equitable interest to Beverley. It is not clear who took this call.
39. On 27 January 2016 Gillian and Beverley met Mr Hall for the last time. Mr Hall made a file note in which he noted that one joint owner of unregistered property could not

register. The note continued: *'Had prepared notice of severance before I realised that it had already been done. She was emphatic she did not want me to write to her husband serving him with a copy of the severance notice. She did not want a process server to hand the form to him either. I told her to swear a stat dec. Explained. She took it away with her...Told her we could try an assignment of her interest in the house. Said I had never done it before and law society could not give me a precedent but I had drawn a draft document up. She signed it. I could not under any circumstances guarantee its effect and I would not charge her.'*

40. Gillian executed the January 2016 Deed and signed a further notice of severance on the same day. A draft statutory declaration was prepared, leaving blank the day on which she would have stated she had given the notice to Kenneth. This was never signed by Gillian.
41. In his witness statement Mr Hall stated that he had spoken to Gillian on the telephone on 25 January and that he had prepared the documentation based on this call. It was only when she came in, and he undertook a client identity check, that he realised he had already met and that, as he put it, 'at the beginning we were slightly at cross purposes'.
42. In cross examination Mr Hall explained that it was his practice to close a file after 6 months, and that he had not retrieved it before seeing Gillian on 27 January. Beverley was in attendance at this meeting and said that Mr Hall seemed in a 'bit of a flap at the time'.
43. On behalf of Beverley I also heard evidence from Suzanna Bland, (a long time friend of Gillian's), Kathryn Saunders, (Gillian's granddaughter and Beverley's daughter), Kenneth Hood, (Beverley's partner) and Dorothy Creedon-Wilkes, a nurse at the Spire Bushey Hospital who helped look after Gillian in the last few months of her life.
44. Mrs Bland had known Gillian for some 36 years. Of relevance to this matter, she recalled two conversations. The first was on 5 or 6 August 2015. Gillian visited her home with Beverley. By this time she knew she had terminal cancer. Mrs Bland recalls a conversation outside with Gillian when Gillian told her she was anxious to put her affairs in order and that she had given Kenneth a piece of paper which severed

the joint tenancy. She wanted her estate to pass to Beverley. Kenneth had pushed past her, knocking her to the floor. She said she had spent the majority of her time with him living in fear of him; that he prevented her from having friends around or going out of the house, and that the only time she felt relaxed was when he was working away. Mrs Bland remembers the date because her own mother was diagnosed with cancer a month later.

45. Mrs Bland also stated that she had not seen a lot of Kenneth over the years. She never went to the Property when he was there, except once for his birthday, and once when no-one knew he was there.
46. The second conversation was in October 2015. Gillian had had chemotherapy that day. Gillian told Mrs Bland that she did not want to go back to the Property because Kenneth was not looking after her, and that she now regretted not having left him a long time ago.
47. Kathryn Saunders was very close to her grandmother, who looked after her and her siblings during the working week when they were young. She did not have much contact with Kenneth, only visiting the Property when he was at work or away. Kathryn's impression was that Gillian was controlled by Kenneth. She had no money, apart from disability living allowance. Kenneth gave her a credit card to use, but Gillian had to give an explanation for every item of expenditure. On one occasion Kathryn remembers taking her grandmother to Clarks to buy a new pair of shoes. She said she had never known anyone to be so scared to buy a pair of shoes. Later, when she was ill, she bought an expensive thermometer, but had to keep the receipt to show Kenneth.
48. In January 2015 Kathryn moved into the same street as Gillian. Gillian was terrified of telling Kenneth about the diagnosis of terminal cancer, and even attended various chemotherapy sessions without him knowing. Gillian wanted to go to Imp Club meeting and thought that if she told Kenneth she would not be able to go. Around the beginning of August 2015 Kathryn recalled coming home to find her grandmother in her garden. She was chain smoking and clearly distressed. It took her some time to calm herself sufficiently to tell Kathryn. She said she had given Kenneth some paperwork to sever the joint tenancy and he had turned nasty. When Kathryn asked for

more details, her grandmother said 'Just leave it, Kate'. In cross examination, Kathryn stated that she could not recall if this happened before or after the Imp Club meeting. Pressed as to how she could be sure that Gillian had given the Notice, Kathryn replied that her grandmother was the most honest person she knew, and that she was determined to do what she could to put things right so far as Beverley was concerned.

49. In December 2015 Gillian told Kathryn that she and Beverley had finally gone to the police to tell them about the historic abuse. She said she had found the courage to do so now that she was terminally ill. Gillian was determined that Kenneth would not have a penny from her estate, and requested that he should not attend her funeral.
50. Kenneth Hood knew Gillian for some two years before she died. He too recalled a conversation around the beginning/middle of August when Gillian was at Bingo, and was talking about having served some paperwork on Kenneth which severed the joint tenancy, and how angry he had been. He could not recall the exact word she used: paperwork was his word, not Gillian's. As stated above, Gillian went to live with Beverley and Kenneth in the autumn of 2015.
51. Dorothy Creedon-Wilkes spent a great deal of time with Gillian when she was the Spire and the Elstree Cancer Centre. Gillian described the neglectful care her husband gave her when she was first diagnosed, the past difficulties involving abuse of her daughter, and of her determination to leave the Property to Beverley. She asked that Kenneth should not be allowed to visit her or to telephone her at the hospital. He tried to speak to her twice by telephone. Mrs Creedon-Wilkes' evidence was that Gillian was that she had seen a solicitor and was happy in the knowledge that her share of the Property was going to Beverley.
52. Kenneth's evidence was as follows. He denied that he was given the Notice on or about 3 August 2015 or at all. He described his relationship with Gillian as completely normal at that stage. She told him of her diagnosis of cancer after the Imp Club rally. He denied that he was abusive, controlling or manipulative. They had been married for 41 years and he is bereft that she is no longer with him. In cross examination he stated people were conspiring against him: his wife was under a great deal of strain due to her ill health, and suffered from a steroid induced psychosis. Beverley confirmed that her mother had had a bad reaction to the steroid medication she was taking.

53. Kenneth described the letter written by Gillian on 3 August 2015 at the offices of Michael Hall & Co as a work of fiction: he does not believe that she was ever frightened of him, and never heard his wife use the term ‘control freak’.
54. Kenneth also added that he accepted that it was his wife’s wish that Beverley should have her share of the Property: it was always accepted, he said, that half the house was hers. The fact that she wanted to leave her share to Beverley was clearly set out in her Will. He recalled an occasion when Beverley and his wife came back to the house and she said that it was time to make a Will: she said that she had left half the house to Beverley but that he could stay there for the rest of his life. His plan, he said, was to leave his share to Beverley’s brother, Justin. When asked why none of this evidence was in his statement he said that he did not believe it to be relevant. But he was adamant that the Notice had not been served. If she had, he said, he was big enough to admit it.
55. The last contact he had with his wife was when he called her to wish her Happy New Year. At that stage, she seemed chatty and happy. He did not accept that he tried to call her again, but added that it could be true.

Conclusion

56. Having regard to all the evidence before me, both written and oral, I am satisfied that the Notice was served on or about 3 August 2015. I should say at the outset that I do not consider it to be a matter of great significance whether the service was on that date or possibly a little later (after, say, the Imp Club meeting).
57. I start with the overall context. The family circumstances, as is clear from the above narrative, were fraught with difficulty and sadness. Kenneth’s plea of guilty speaks for itself. It seems to be me entirely understandable that, following her diagnosis, Gillian would have taken every step open to her to ensure that Beverley should inherit her share of the Property.
58. The detailed and meticulous notes taken by Mr Hall confirm this fact. A copy of the Notice was kept on file. On 21 August 2015 she signed a short statement of truth

confirming that she had served the Notice. I do not accept Mr Palfrey's submission that Gillian continued (as, he suggested, she had done all her life) to play Beverley and Kenneth off against each other: telling each, or behaving towards each, in the way they wanted her to. By the summer of 2015 she had nothing to lose in incurring Kenneth's anger. It can only have been a relief to her to know that she had achieved what she set out to do, namely leaving her share to Beverley, as expressed in her Will and now accepted by Kenneth.

59. I also find that the comment that she wanted to choose her moment to serve the Notice rings true, as does her concern not to spend money on a statutory declaration. I accept the evidence given by the various witnesses as to her state of mind in the summer of 2015, and, in particular, their evidence that they had been told that she had served the Notice.

60. Her last visit to Michael Hall & Co is all of a piece with her previous behaviour. By this time, she was clearly quite ill. She was anxious to ensure that every step that could be taken was taken to leave her share of the Property to Beverley. She had made a Will, had served the Notice, and wanted to know whether she could transfer her half share to Beverley. Mr Hall had clearly forgotten the fact that he had already prepared and given her a notice of severance: this is clear from the note he made on 27 January 2016. His confusion on this point, and the fact that she signed a second notice, does not in any way detract from the overall weight of the evidence in support of my finding that the Notice had been served shortly after her visit to him on 3 August 2015.

61. I also accept the submission made by Mr Davies that if she had not served the Notice as claimed she would certainly have served another notice in January following her last visit to Mr Hall. This is all the more likely in view of the fact that she had been told that the January 2016 Deed might not be effective to sever the joint tenancy.

62. I did not find the evidence given by Mr Dunkley to be credible. His oral evidence, in particular in relation to the discussion regarding the Will, is markedly different from the evidence in his witness statement. His recognition that his wife wanted her share to go to Beverley while no doubt welcome was made late in the day, and was further qualified by the claim (which I do not accept) that Gillian told him he could live in the

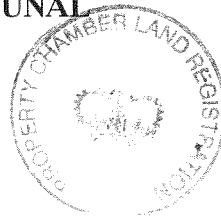
house for the rest of his life. It seems to me that what emerges clearly from all the evidence it is that Gillian wanted Beverley to have the benefit of her share in the Property on her death, and not later.

63. Accordingly it seems to me that the appropriate order to make is as follows. The Chief Land Registrar is to give effect to the application for first registration subject to the following further orders. First, the caution under title number HD552980 is to be removed to allow for the registration. Secondly, the following restrictions are to be entered on the new title: a restriction in Form A, and a further restriction in Form II. These restrictions will protect Beverley's beneficial interest in the Property. As these orders were not the subject of any submissions or discussions at the conclusion of the hearing I am sending the order in draft form for approval by Beverley's solicitors.

64. In principle, Beverley is entitled to her costs of the application from the date of referral to the Tribunal. (9 February 2017). A schedule in Form N260 has been served dated 19 October 2018. Any objections or representations are to be filed at the Tribunal and served on the Beverley's solicitors by 5 December 2018. I will thereafter deal with the question of costs on paper.

BY ORDER OF THE TRIBUNAL

Ann McAllister



Dated this 20th day of November 2018