Daughter Wins Claim To Have Mother's Wills Declared Invalid

A daughter has won a High Court case to have her late mother's last two wills declared invalid. This means that she will now inherit half of her mother's £350,000 estate.

Background

Jean Clitheroe ('Jean") died in 2017. She had 3 children, but one of her daughters, Debra, died from cancer, in 2009.

Jean made wills in 2010 and 2013, which left most of her estate to her son, John Clitheroe ("John"), and some chattels to her daughter, Susan Clitheroe ("Susan")

Jean gave various reasons for leaving the majority of her estate to John and also made a handwritten note, which described Susan as a *"shopaholic"*. It also added that Susan was a *"spendthrift and will just spend her inheritance"*.

Susan's position was that the 2010 and 2013 wills were invalid, due to Jean lacking the testamentary capacity required to make her wills. John's position was that the wills were valid.

The High Court referred to the case as a *"bitter family dispute"* and heard that Jean had formed particular views about Susan's conduct. For example, Jean believed that Susan had stolen items belonging to Jean and Debra, including a watch, 65 toy trolls and Harry Potter books.

The Court stated that Susan claimed that the reasons which Jean had given for limiting her inheritance were *"…false or else based on false beliefs induced by John, who knew them to be false or else did not care if they were or not. "*

The Court had to consider issues such as whether Jean's affections for Susan had been poisoned, whether Debra's death had impacted upon Jean's testamentary capacity and whether she had testamentary capacity

Deputy Master Linwood found John to be *"… an unreliable witness who did not care much for the truth. He gave at times glib explanations of some matters and at other times could not accept when he clearly was wrong"*.

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The Court concluded that *"Jean was at the material times suffering from an affective disorder which includes complex grief reaction and persisting depression that impaired her testamentary capacity"*. It therefore held that John had *failed "...on the balance of probabilities to prove that Jean was not suffering from an affective disorder of the mind and was not suffering from delusions which affected her testamentary capacity when she made either will"*.

This meant that Jean had died intestate (as though she had no will) and, under the Intestacy Rules, Susan would be entitled to half of Jean's estate.

Paranoid Delusions and Fraudulent Calumny

In the *Clitheroe* case, the Court considered issues which are referred to as paranoid delusions and fraudulent calumny.

In relation to wills, paranoid delusions are beliefs which a person wrongly has which directly affects how they provide (or do not provide) for someone in their will. For example, if person A wrongly believes that person B is stealing from them and they exclude them from their will as a result. Such delusions can invalidate a will

Fraudulent calumny is often referred to as a "poisoning of the mind" It involves a beneficiary making false representations to a testator (person making a will) about the character or conduct of another potential beneficiary, in order to persuade the testator to change their will. For example, A and B are beneficences of C's will. Person A lies to C, by saying that person B has stolen from them. Person C then changes their will, to exclude person B as a result of the lie.

Bereavement and will making

As demonstrated by the *Clitheroe* case, grief can be an important factor in will validity. The High Court also considered the effect of bereavement on the testamentary capacity in the case *Key v Key [2010] EWHC 408*.

George Key died in 2008 aged 91 years. His wife, Sybil had predeceased him and they had a lengthy marriage of 65 years.

A week after Sybil's death, a solicitor visited George to make a new will. The will provided that the bulk of his estate would be divided between his daughters, Jane and Mary; whereas, an earlier will had left a life interest to Sybil, with the remainder of the estate to be divided equally between his two sons, Richard and John.

Richard and John challenged the will on the basis of lack of testamentary capacity and lack of knowledge and approval. The Court heard evidence about Mr Key's health and the effect of Sybil's death upon him. It held that the impact of bereavement should be considered in will preparation, especially when a will is made shortly after a significant bereavement.

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However, not every case where someone has made a will following a family bereavement means that their will is invalidated. Grief can affect people in different ways and every case is therefore considered on its own facts.

However checking testamentary capacity at a time when a will is made is vital in order to try to reduce the risk of the will later being challenged.

Our Disputed Wills Team deal with cases involving testamentary capacity and will validity. Please contact us on 01202 786125 or email us at online.enquiries@la-law.com.

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