IN THE SUPREME COURT OF BELIZE A.D. 2010
(CIVIL)

CLAIM NO. 502 of 2010

BETWEEN

Hallie Dorothy Young	**Claimant**
AND	
Woodrow Gabourel **Norris Meighan**	**Defendants**

Before: **The Honourable Madame Justice Griffith**

Dates of hearing: **12/03/15; 14/4 & 27/4/15 (on written submissions)**

Appearances: **Ms. Pricilla Banner of Courtenay Coye LLP for the Claimant. Mr. Mark Williams for the Defendants.**

DECISION

Introduction

1. The Claimant, Halle Dorothy Young is a Belizean national residing in California, United States of America. She brings this action against the Defendants Woodrow Gabourel, also a Belizean residing in the United States and Norris Meighan in his capacity as the lawful representative (by power of attorney) of Woodrow Gabourel. The Claimant and 1st Defendant are siblings, their mother was Winifred Gabourel (deceased) who died in 2005. The claim is for revocation of the Grant of Letters of Administration issued to Mr. Gabourel by his lawful attorney Mr. Meighan in respect of the estate of the deceased Winifred Gabourel, on the basis that the deceased died leaving a will and 1st Defendant was aware of that fact; and that the 1st Defendant failed to properly notify his siblings of his application for a grant of administration.

2. The Claim is also for Mr. Gabourel to account for his dealings with the Estate and upon the revocation of the Grant, for the Claimant to be permitted to apply for a grant of administration of the estate with will annexed. Mr. Gabourel, the 1st Defendant is the main antagonist and resists the claim on the basis that the deceased was not of sound mind or body at the time of executing her will; that the deceased did not know or approve the contents of her will; and that the deceased was unduly influenced by the Claimant in the making and execution of her will. The 1st Defendant also alleges that his grant of administration was properly obtained with due notice to his siblings, such notice having been sent to all of them by post.

The Issues

3. The issues found by the Court for determination are as follows:

(I) Is the will purported to be that of Winifred Gabourel valid?

Sub issues:-

(i) Is the will valid according to and capable of being admitted to probate under Belize law?

(ii) Was Winifred Gabourel of sound mind and body at the time of execution of her will?

(iii) Did the Claimant exercise undue influence over Winifred Gabourel in the making of her will?

(iv) Did Winifred Gabourel know and approve of the contents of her will at the time of its execution?

(II) If the will is valid, was the 1st Defendant aware of its existence prior to him obtaining the Grant of Administration and if so, what is the consequence of that knowledge?

(III) If the will is not valid, did the 1st Defendant properly obtain the grant of administration for the deceased's estate?

(IV) If the Grant is found properly obtained, have the Defendants accounted for the administration of the estate?

Background

4. The Claimant, Hallie Dorothy Young and the 1st Defendant are two of eight siblings who were born to the deceased Winifred Gabourel (there were two adoptive siblings to a total of ten children). The 2nd Defendant is the lawful representative of the 1st Defendant by power of attorney and other than being necessarily joined as such, plays no part in the proceedings. The Claimant and 1st Defendant, albeit Belizean nationals, both reside and from all indications appear to be domiciled in the United States, the Claimant from the early 1980's, and the 1st Defendant even before then. Their deceased mother, Winifred Gabourel, also appears to have been domiciled in the United States where she died in December, 2005 leaving seven surviving children.

5. In December, 2009, the 1st Defendant applied for Letters of Administration to the estate of his deceased mother and was granted same in March, 2010. The Claimant alleges that the Grant issued to the 1st Defendant is unlawful for reason that their mother died leaving a will, and the 1st Defendant was aware of that fact and misrepresented to the Court in his application for the Grant, that the deceased had died intestate. Further or in the alternative, the Claimant alleges that the 1st Defendant did not comply with the procedure for obtaining the Grant of Administration, as he failed to obtain the consent of all of his siblings, to do so.

The Claimant alleges that this failure was occasioned in her case, by the 1st Defendant deliberately sending the consent forms to an address he knew not to be her correct address, so that she never got the form and therefore did not consent. The 1st Defendant the Claimant says, then misrepresented to the Court in his application, that he had done all that he possibly could to obtain the consent of his siblings.

6. With respect to her mother's will, the Claimant alleges that in 1987, after their mother expressed a wish to make a will, she and her sister Ella Maridiaga (nee Gabourel), accompanied their mother to a lawyer (who was her lawyer) where her mother gave instructions to the lawyer, who prepared the will. According to her mother's instructions, the terms of the will were that the Claimant and sister Ella, were the beneficiaries of their mother's entire estate and that neither the remaining siblings nor their father (at the time still alive), were to receive any benefit.
7. At the time of making the will the deceased resided with another sister Brenda in California and not the Claimant. After its execution, the will was kept by Ella who resided in New Jersey. Ella kept the will for some years and thereafter (whilst their mother was still alive), sent it to the Claimant. The only property owned by the deceased was a house in Handyside St., Belize City, which was not specifically mentioned in the will. The Claimant had dealings with that property both prior to and after the death of her mother where she financially assisted with its repair after destruction by fire and contributed to its upkeep after the death of her mother.

8. It was not entirely clear from the Claimant's case whether, when and how the remaining siblings were notified of their mother's will after it was made and after her death, but the 1st Defendant stated that he first learned of the will at his mother's funeral and he was skeptical about it from that time. The Claimant learned of the Grant of Administration issued to the 1st Defendant in March, 2010 after her agent for the property in Belize notified her of a letter written to him by an attorney on behalf of the 1st Defendant. The claim was thereafter filed in July, 2010.

Issue I - Validity of the Will of Winifred Gabourel

(i) The will under the laws of Belize

9. The making of a will in Belize is governed by the Wills Act, Cap. 203 of the Laws of Belize. The administration of estates whether on testacy or intestacy is governed by the Administration of Estates Act, Cap. 197 of the Laws of Belize. The conduct of probate proceedings is governed by the Contentious and Non Contentious Probate Rules made pursuant to section 165 of the Supreme Court Act, Cap. 91 as well as CPR 2005 Part 67. The first question with respect to the validity of the will arises by virtue of the fact that the will was made in the United States by a testator for all intents and purposes domiciled out of Belize. In other words, can the will, having been made overseas, be admitted to probate in Belize if found to be valid. Section 161 of Cap. 91 provides thus:-

> "*Any party interested in a will may compel, and any executor or party desiring or having execution of a will may have, proof thereof in solemn form in accordance with the practice now obtaining in the Probate Division of Her Majesty's High Court of Justice in England.*"

10. Pursuant to the authority of section 161 of Cap. 91, one is able to consult the practice at the time obtaining in the Probate Division of the High Court, in England. In relation to the admissibility to proof of a will where a deceased dies domiciled out of England, this practice provides[1] that as regards immovable property, the will (whether of British subject or foreigner and regardless of the domicile of the testator), must have been executed in the form prescribed by the Wills Act, 1837. In applying this practice to Belize (the Wills Act Cap. 203 is the Wills Act, 1837), the will of Winifred Gabourel must be found valid according to the Will's Act of Belize.
11. Learned Counsel for the Defendants makes no allegation that the will in question offends against any provision of the Wills Act of Belize. There is also nothing on the face of the evidence before the Court which raises any question of any non-compliance of the will with the said Act. This notwithstanding, learned Counsel for the Defendants submits that the will by virtue of its terms, does not apply to property in Belize. Particularly, it is submitted that the will makes mention of terms 'separate property, community property and quasi community property' which have peculiar meanings, not applicable to Belize law. Mention is also made to the reference to the California Probate Code 201.5 which signals that the will is meant to deal exclusively with property in that jurisdiction. The non-applicability of the will to property situate in Belize is also submitted on the basis of the mention of the applicability of California probate law to the dispositions contained in the will.

[1] Tristram & Cootes Probate Practice, 21st Ed. 1960 pg 92 et seq.

12. The Court is not at all convinced in relation to these arguments. In the first place, it is reiterated that what is required for the probate of a will of a person domiciled out of Belize (whether the testator is a Belize national or not), which seeks to dispose of immovable property in Belize, is that the will be valid according to the provisions of the Wills Act. There is firstly no restraint on disposition of overseas property under the Wills Act nor does the Court find that the specific references to the law of California are to be construed in such a way that restricts the location of property disposed of by the will to California. In the circumstances it is found that the paper writing propounded as the last will and testament of Winifred Gabourel, deceased, does satisfy the requirements for a valid will under the Wills Act of Belize. But that is not the end of the matter.

(ii) <u>The voluntariness of the testator's will</u>.

13. As was required by CPR 67.8(3), the Defendants specifically pleaded their objection to the alleged will of the deceased, in terms that the deceased (a) was not aware of nor approved of the contents of the will; (b) was not of sound mind or body at the time of execution of the will; and (c) was subjected to the undue influence of the Claimant in the making of the will. Each of these three grounds will be examined in turn.

(a) Was Winifred Gabourel of sound mind and body when she executed the will?

14. In his pleading, the Defendant alleges that the deceased was in her eighties at the time of execution of the will, that she was

heavily sedated on several types of medication due to complications arising from illnesses which caused temporary lapses in consciousness and severely affected her memory and understanding. An incident was described where the deceased almost burnt herself whilst attempting to light the stove and had to be kept away from the kitchen thereafter. By the conclusion of the trial this allegation did not appear to be pursued on the part of the Defendants.

15. In the Court's view the apparent abandonment of this objection to the execution of the will was well left. The particulars pleaded paint a dire picture of the physical condition of the deceased, however, no medical evidence of any sort nor supporting testimony of any other person was presented by the Defendants (there were 6 other siblings alive, one residing in Belize), to substantiate this allegation as to the frail health of the deceased. To the contrary, the evidence of the Claimant and witness, sister Ella Maridiaga was of the deceased being in good health despite being at the time of the making of the will, eighty years old. That the deceased lived another eighteen years, coupled with the absence of any evidence as to ill health provides sufficient basis for the Court to find that the allegation of the Defendants as to the ill health of the deceased at the time of execution of the will to be unfounded.

(b) Was the deceased unduly influenced by the Claimant in the making of the will?

16. In support of his contention that the Claimant exercised undue influence over the deceased, the 1st Defendant pleaded that at the time of execution of the will the deceased was living with the

Claimant or spent considerable time with the Claimant at her residence and under her care. Additionally, the 1st Defendant pleaded, that the deceased had requested him to go to the Claimant's house to collect the title documents to the Belize property from her as the deceased was afraid to ask for them herself. By the end of the trial the submission in relation to undue influence also alleged that the Claimant was directly or indirectly involved in the preparation or execution of the will and stood to obtain a substantial benefit from it.

17. Further evidence as to undue influence was that the entire consultation took only about half an hour and despite the fact that the deceased was allegedly asked by the lawyer to list her properties, the Belize property – the only property the deceased owned, was not specifically mentioned in the will. Finally, it was alleged that the undue influence of the Claimant was evidenced by the fact that the purported will was never shown or produced to the 1st Defendant until about 4 years after the death of the deceased.

18. In considering the matter, the Court must first ask - what is undue influence? Undue influence is described in Halsbury's Laws of England[2] as existing where there is coercion. With respect to coercion, reference is made to **Wingrove v Wingrove**[3] which states as follows:-

> *"To establish undue influence sufficient to invalidate a will, it must be shown that the will of the testator was coerced into doing that which he did not desire to do, and the mere fact that in making his will he was influenced by immoral considerations does not amount to such undue influence so long as the dispositions of the will express the wishes of the testator."*

[2] Halsbury's Laws of England 3rd Ed. Vol. 16 @ para 369
[3] (1885) 11 PD 81

Halsbury's Laws goes on to state that there must be '*pressure of whatever character, whether acting on the fears or hopes, if so exerted as to overpower the volition without convincing the judgment…"*[4] It is also stated that a person may exercise *'an unbounded influence over another which may be a very bad influence, without its being undue influence in the legal sense of the word.*[5] Further, *that the mere proof of existence of the relation of parent and child…does not raise a presumption of undue influence sufficient to vitiate a gift by will*[6]. Undue influence is said to be required to be affirmatively proved by the person asserting it.[7]

19. The Court must apply these principles to the instant case, in order to ascertain whether the claim of undue influence has been successfully invoked by the Defendants. It is the law, that it is the party alleging undue influence who must discharge the burden of proof by clear evidence that the influence was in fact exercised.[8] Therefore, one must examine the evidence the Defendants have put forward to support their charge of undue influence. In the first instance, the Court plainly finds, that the deceased was not residing with the Claimant at the time of making the will. The deceased was residing with sister Brenda albeit, it is found that the Claimant was a frequent visitor to her mother. It is correct that the Claimant took the deceased to her lawyer - the man who did her papers, the Claimant said.

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[4] Halsbury's supra para 369
[5] Ibid.
[6] Ibid. @ para 370
[7] Indira Salisbury et anor (as Executrixes of the Estate of David Toms, deceased v Mandy Raquel Toms & Christopher Bateston. ANUHCV 2005/000545 per Harris J.
[8] Ibid @ para 369

20. The Court does not find that however, that this fact in any way gives rise to any question of undue influence. To take a close family member to a lawyer with whom one has dealings for the family member to conduct business is entirely reasonable, if not expected. That the Claimant was present during the preparation and issuance of instructions also raises no question of undue influence. This fact was never concealed in any way and no evidence has been raised of coercion by the Claimant of the deceased. It was the evidence of sister Ella, the she was also aware prior to the day of making the will that it was her mother's wish to do so and this evidence was believed.
21. The allegation that the deceased was afraid of the Claimant, was not substantiated in any way and having regard to the display of aggression and belligerence by the 1st Defendant towards his sister whilst giving evidence, significant doubt is cast upon the credibility of this allegation coming from the 1st Defendant. Reference is made to the decision of **Wilkes v Wilkes et anor**[9] which can be of useful application on the issue of undue influence. In this case, a deceased testator having made a will in 1985 leaving her residuary estate to all of her children, made a second will in 1995, leaving her residuary estate to a single son. A disinherited son sought revocation of the grant of probate issued to the beneficiary on the grounds inter alia, of undue influence. It was found that the charge of undue influence had not been proved as there was no evidence that the beneficiary son had been aggressive towards the deceased or sought to coerce her into dealing with her affairs against her will.

[9] [2000] All ER (D) 778

22. In the instant case, it is found that there has been no positive evidence of coercion or pressure by the Claimant of any nature against the deceased. The fact of the parent and child relationship between the Claimant and the deceased with nothing more provides no basis for a finding of undue influence. The burden of proving undue influence falls squarely on the shoulders of the 1st Defendant who alleges it, this burden has not been discharged in the form of any evidence, thus no exercise of undue influence by the Claimant against the deceased has been found regarding the making of the will.

(c) Did the deceased know or approve of contents of her will

23. The specific particulars pleaded by the Defendants in relation to this allegation were:-
    - The Claimant's name was placed first in the list of names of the deceased children in the will, even though she was not the eldest child and the name of one of the siblings had been omitted from the list;
    - The dates of the children were stated as approximations and that of the Claimant was the only one stated correctly; and
    - The deceased had disinherited her late husband with whom she'd lived and cohabited for more than 50 years up until his death
24. Learned Counsel on behalf of the Defendants submitted a number of authorities to the effect that where suspicion is raised by the circumstances of preparation of a will - that it does not express a testator's mind, a Court ought not to pronounce in favour of the will's validity unless that suspicion is removed.[10]

[10] Halsbury's Laws of England 4th Ed. Vol. 17(2) @ para 318; Williams & Mortimer on Executors,

More particularly, where a person involved or instrumental in the preparation of a will receives a substantial benefit, the suspicion is high and the onus on the person propounding the will even heavier, to prove the righteousness of the transaction. Learned Counsel for the Defendant submits that such suspicious circumstances exist in the instant case. The Court finds no disfavor with Learned Counsel's submissions on the law that the onus is on those propounding a will to prove that the testator was aware of and approved its contents. The question however, is whether the instant case is one in which the suspicions of the Court as to the circumstances of preparation or execution of the will ought to be aroused so as to cast the onus on the Claimant to prove that the deceased knew and approved its contents.

25. With respect to the allegation that the names listed commenced with the Claimant's name despite the fact that she was not the eldest child, it is not found that this by itself excites any suspicion. The Claimant was there at the time of preparation and it is not inconceivable that her name is first mentioned by virtue of that fact alone. Secondly, it is alleged that only the Claimant's birthdate is particularly stated whereas the remaining children's birthdates are given as approximations. This is untrue as of the 10 names listed, all but two birthdates were particularized.
26. Finally, it is alleged that the Claimant would not have disinherited her husband with whom she had lived up to 50 years until his death. Firstly, 50 years does not mean 50 happy years and a reasonable explanation was provided by the Claimant's evidence which was not contradicted by the 1st Defendant.

Administrators and Probate 15th Ed. @ pgs 148-151; Fulton v Andrew (1875) L.R. HL 448; Thomas v Thomas (1969) 20 WIR 58.

This explanation was that not only was the deceased's husband unwell at the time of the making of the will (he in fact died two years thereafter), but also that the deceased asked her daughters if they would take care of their father, and they assured her in the affirmative. It is therefore not considered that the deceased's failure to make any disposition in favour of her husband by itself, arouses any suspicion.

27. Whilst these allegations are found not to raise any suspicion individually, the Court must also consider whether the cumulative effect of the allegations ought to raise such a suspicion, together with other circumstances pleaded and advanced in evidence by the Defendants. In so considering, whilst the will was prepared in a solicitor's office, there can be sufficient suspicion raised by the cumulative effect of the circumstances in the following terms:-

    (i) The deceased was elderly, in her advanced years, at the age of 80;

    (ii) The two persons who accompanied the deceased to make her will were the sole beneficiaries under the will;

    (iii) The lawyer who prepared the will was the lawyer for one of the beneficiaries;

    (iv) In the will, the non-chronological listing of the names of the children; the approximation of two of the dates of birth of the children and the omission of a child who was alive at the time can altogether on the one hand give rise to the suggestion that it was not the deceased, their mother, who supplied the information. If it was the deceased who gave the information in that manner, that can on the other hand cast doubt as to her capacity at the time of making the will;

(v) In the context of the specific references to California law, community property and separate property, the fact that the only real property owned by the deceased is not mentioned in the will;

(vi) The disinheritance of the remaining nine children in favour of the two who accompanied the deceased to the making of the will;

28. The total effect of all these circumstances is that there is some suspicion raised as to the deceased's true appreciation and approval of the contents of the will. As per the authorities cited by Learned Counsel for the Defendants, it is therefore for the Claimant to prove that the deceased was so aware. The evidence of the making of the will, arises only from the sole beneficiaries themselves, who bear the burden of disproving the suspicion that the Court finds to exist as to the deceased's knowledge and approval of the contents of her will. It has been noted before (then to the Defendant's disadvantage) that although there are other siblings alive (one residing in Belize), there has been no evidence from any other sibling as to the deceased's state of mind at the time of the will or dispensation in relation to disposal of her estate.

29. There has also been no evidence from any attesting witness. Whilst the Court appreciates the lapse of time and the possibility of the attesting witnesses not being available, no evidence has been put forward of what attempts, if any, were made to locate them. This can be contrasted with the decision of ***Wilkes***[11] above, where in similar circumstances of disinheritance of several children in favour of a single child, there was evidence from independent witnesses who confirmed the testamentary capacity

[11] Supra

of the deceased and that it was known, that she intended to give her estate to the beneficiary son and the will had been executed with the benefit of legal advice. In those circumstances it was accepted by the Court that the deceased knew and approved the contents of her will. There is no evidence of any similar independent nature in the case at bar thus the suspicion of the Court as to whether the deceased knew and approved the contents of her will has not been allayed. The Court is therefore unable to pronounce in favour of the validity of the will of the Claimant's mother.

Issue II – If the will is not valid, did the Defendants follow proper procedure in obtaining the grant of administration?

30. The Court has found that there was a suspicion aroused as to whether the deceased knew and approved the contents of her will which the Claimant has failed to disprove. In the circumstances, this issue as to whether the 1st Defendant was aware of the existence of the will prior to his application for the grant of administration is rendered moot. The alternative question however is whether the Defendants followed proper procedure in applying for the grant of administration. Specifically, this question arises in relation to the requirement for the consent of the remaining children of the deceased to have been obtained in order for the 1st Defendant to have applied for the grant.
31. The Claimant alleges that her consent was not obtained nor properly dispensed with as the 1st Defendant deliberately sent the consent forms to an address he knew not to be hers.

The 1st Defendant counters with the assertion that the address was that of the Claimant's daughter where she frequented, so much so that the consent form must have come to her attention. It is found that Counsel for both parties misapprehend the law in this regard.

32. The law is, that whilst there is a requirement for persons with priority to obtain a grant to be cleared off (by obtaining consent or satisfactory account of their absence), where persons are entitled in the same degree (as are the siblings in the instant case), there is no requirement for consent or notice. Notice is given by the gazetting of the application for a grant, thus a grant of administration may be issued to persons in the same degree without notice to the others (unless a caveat is entered). In the United Kingdom's 1987 Non Contentious Probate Rules (NCPR), this is clearly stated[12].

33. The Rules applicable to Belize however are the UK 1954 NCPR[13], in respect of which Halsbury's Laws of England acknowledge[14] that with respect to persons entitled in the same degree on intestacy, preference is given to the one who comes with the support of the greatest interest or who comes first for the grant – in other words, first come, first served. Further, Halsbury's states[15] that a grant may be made to any person entitled thereto without notice to other persons entitled in the same degree. There is therefore no question as to whether or not the 1st Defendant followed proper procedure in applying for the grant of administration as related to any issue of consent.

[12] UK NCPR 1987 R 59(4)
[13] UK NCPR 1954 R 25(1).
[14] 3rd Edition Vol 16 @ paras 393 - 394
[15] Ibid

Issue IV – Have the Defendants given an account of the administration of the estate?

34. In the absence of a will, the property at Handyside Street, which the Defendants have now taken possession of, devolves by virtue of the provisions of the Administration of Estates Act[16], to all the surviving children of the deceased, irrespective of who contributed to its upkeep or not. The Defendants are by virtue of sections 24 and 49 of the Act, obliged to account for all dealings with that property to date. Without much consideration the Court finds that the Defendants have entirely failed in discharging their duty to account in respect of their dealings with the estate. It appears that the 1st Defendant is either unaware of his duty in that regard or has no intention of carrying out his duty. In this respect, the Court by virtue of its power under section 25 of the Act, has the power to order the Defendants to produce such an account and will so order.

Final Disposition

35. The Court finds and declares as follows:-

(i) The Claimant has failed to prove the validity of the document propounded as the last will and testament of Winifred Gabourel;

(ii) The Grant of Administration in favour of the 2nd Defendant was lawfully obtained;

(iii) The Defendants have failed to discharge their obligation to properly administer or account for their administration of the estate.

[16] Cap. 197 of the Laws of Belize, Section 54

36. The Court therefore makes the following orders:-

(i) The Claim for revocation of the Grant of Administration issued to Woodrow Gabourel by his Lawful Attorney Norris Meighan is dismissed;

(ii) The 1st Defendant by his Lawful Attorney shall on or before the 31st day of August, 2015 file with the Court an account of their dealings with the Estate of Winifred Gabourel, most particularly the property situate at Handyside Street, Belize City, Belize.

(iii) Costs are awarded to the Defendants but at the rate of 70% of their total costs, to be assessed if not agreed.

Dated this 30th day of June, 2015

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Shona O. Griffith
Supreme Court Judge