IN THE SUPREME COURT OF BELIZE, A.D. 2022

CLAIM No. 113 of 2019

BETWEEN

JALIL BEDRAN JR	**1ST CLAIMANT**
YVANNA NAZLE BEDRAN	**2ND CLAIMANT**

AND

JAKLYN PAMELA POLANCO BEDRAN	**DEFENDANT**

BEFORE: The Honourable Madam Justice Patricia Farnese

TRIAL DATE: May 3rd and 4th, 2022

APPEARANCES: Mr. Gavin H. Courtenay for the Claimants
Mr. Rene A. Montero for the Defendant

DECISION

Introduction

[1] On April 16, 2008, the defendant, Mrs. Jaklyn Polanco Bedran was granted letters of administration of the estate of her late husband, Mr. Jalil Bedran Sr. Mr. Bedran Sr. was married in 2015 to the defendant and executed the will at the centre of the dispute on December 27, 2016. He died on February 4, 2017. The children of Mr. Bedran Sr. have asked that the grant of administration be revoked on the grounds that the probated will is either a forgery or is void

because it was executed when the testator lacked testamentary capacity. Mrs. Polanco Bedran is the sole beneficiary of the probated will. The dispute arises because the claimants, who are children from a previous marriage, anticipated being beneficiaries of their father's estate based on previous wills and conversations the 1st claimant testified having with his father prior to his remarriage.

[2] Upon reviewing the parties' oral and written submissions, I find that the probated will withstands the claimants' challenge despite expert evidence that the signature on the probated will is unlikely to be that of Mr. Bedran Sr. When the whole of the evidence is reviewed, Mrs. Polanco Bedran has established, on a balance of probabilities, that the probated will was duly executed.

Issues

[3] A valid will must be duly executed by a testator with the mental capacity to make a will and knowledge and approval of the will's content and legal effect.[1] The party asserting that the will is valid has the burden to prove its validity. A presumption of due execution upon proof that the will meets statutory requirements exists to avoid frivolous claims by parties who feel entitled to the testator's estate without cause. Parties contesting the will's validity must provide sufficient evidence that raises real doubts as to the testator's knowledge, approval, or capacity. If they succeed, the burden returns to the party defending the will's validity to remove all suspicion

[1] *Tyrrell v. Painton*, [1894] P. 151, at p. 157.

surrounding the drafting and signing of the will by proving, on a balance of probabilities, the testator's knowledge, approval and capacity.

The following issues arise in this case: Does the presumption of due execution operate in this case?

- Have the claimants raised a real doubt to rebut the presumption of due execution on the basis that Mr. Bedran Sr. lacked knowledge and approval of the probated will?
- Did the testator have knowledge and demonstrate approval of the probated will?
- Have the claimants raised a real doubt to rebut the presumption of due execution on the basis that Mr. Bedran Sr. lacked testamentary capacity?
- Did the testator have the testamentary capacity to create the probated will?

Analysis

Does the presumption of due execution operate in this case?

[4] A will that meets the requirements for execution as outlined in section 7 of *The Wills Act* and is "rationale on its face" will be presumed to be duly executed. [2] The requirements are cumulative and strictly applied.[3] Section 7 provides:

> (1) No will shall be valid unless it is in writing, and executed in manner hereinafter mentioned, that is to say-

[2] *In re Key*, [2010] 1 WLR 408 (Ch) at para 97 [*Key*].
[3] *Husman v. Husman*, Supreme Court Claim No. 515 of 2011 at para 7.

(a) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and

(b) such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(c) such witnesses shall attest and subscribe the will in the presence of the testator.

(2) No form of attestation shall be necessary.

[5] Mrs. Polanco Bedran has demonstrated that the will was duly executed. As required by rule 67.5 of the *Supreme Court (Civil Procedure) Rules, 2005* (CPR), Mrs. Polanco Bedran swore an affidavit of testamentary script and lodged a copy of the probated will with the court. The will contains a signature purporting to be that of Mr. Bedran Sr. at the foot. The will is signed by two witnesses. The will also bears the seal and signature of a Sr. Justice of the Peace and indicates that it was "subscribed and sworn" before him. Each of the witness and the Sr. Justice of the Peace testified that the signatures on the will were their own. They were present when Mr. Bedran signed the will and they signed immediately thereafter. The claimants did not contest this evidence. In addition, no evidence was led to suggest that Mrs. Polanco Bedran was present when Mr. Bedran Sr. discussed the probated will with the witnesses or when the probated will was signed.

[6] The probated will is also eminently rationale on plain reading. The will revokes any previous wills and names Mrs. Polanco Bedran as Executrix, Trustee, and sole beneficiary of Mr. Bedran Sr.'s estate. The will makes provisions for the payment of debts before specifically devising the family home with attached lands of approximately 62 acres, two additional parcels of

land of 20 and 40 acres, and a vehicle. Mr. Bedran Sr. also outlines that his children are educated and successful to explain why they are not named as beneficiaries of his estate. That Mr. Bedran Sr. would wish to modify his will to provide for a new wife when facing uncertain health challenges is eminently rationale.

Have the claimants raised a real doubt to rebut the presumption of due execution on the basis that Mr. Bedran Sr. lacked knowledge and approval of the probated will?

[7] Evidence of a qualified handwriting expert that the testator's signature is likely a forgery has been held to rebut the presumption of due execution.[4] I do not agree with the defendant's assertion that more is required to rebut the presumption of due execution in this case. The claimants have provided an expert report that concludes that the signature on the probated will contains significant differences from compared specimens and is highly unlikely to be that of Mr. Bedran Sr. Whether the expert's evidence is sufficient to convince this court, on a balance of probabilities, that the will was not executed with Mr. Bedran Sr.'s knowledge and approval is not the question at this stage. The question is whether a "real doubt" has been raised.[5] I find that it has.

[8] The expert, Ms. Genoveva Marin, has significant experience providing this kind of expert evidence to the court. Ms. Marin outlined that she understood her responsibilities and obligations to the court and the defence raised no challenges to the quality of her analysis. The defence was

[4] *Husman*, *ibid.* at para 8.
[5] *Montejo v. Montejo*, Supreme Court Claim No. 177 of 2008 at para 81 quoting from *Lucky v. Tewari*, (1965) 8 WIR 363 PC at p. 367.

also provided with the opportunity to put questions to the expert. Having found that the claimants have rebutted the presumption of due execution, the burden returns to Mrs. Polanco Bedran to establish, on a balance of probabilities, testamentary capacity, knowledge, and approval to respond to the allegation of forgery.

Did the testator have knowledge and demonstrate approval of the probated will?

[9] Because testamentary capacity only becomes an issue if I conclude that the will is not a forgery, I will address the testator's knowledge and approval first. The test for proof of a testator's knowledge and approval is well settled.[6] Mrs. Polanco Bedran must affirmatively prove knowledge and approval on a balance of probabilities. Mrs. Polanco Bedran has the evidentiary burden and "satisfying that standard will generally vary in proportion to the degree of suspicion engendered by the circumstances."[7] The expert's conclusion that there is a high likelihood that the signature on the probated will is not Mr. Bedran Sr.'s does not determine that matter. Whether the testator had the knowledge and demonstrated approval of the probated will is a question of fact and I must also consider and weigh the evidence of lay witnesses.[8]

[10] In addition to the authenticity of the testator's signature, the claimants further allege that probated will is suspicious because it purports to devise property that the testator did not own when the probated will was executed. Mrs. Polanco Bedran is also the sole beneficiary unlike previous wills, which made bequests to the testator's children. The 1st claimant also testified of

[6] See generally *Fuller v. Strum*, [2002] 1 WLR 1097.
[7] *Key*, *supra* note 2 at para 117.
[8] *Husman*, *supra* note 3 at para 23.

conversations with his father where Mr. Bedran Sr. expressed his intention to gift real property to his children.

[11] I attribute little weight to the assertion, contained in the pleading that the probated will purported to gift property that Mr. Bedran Sr. no longer owned. The claimants did not specify which property that was. No documentary evidence was tendered to support this assertion and no explanation was provided as to why I should accept that this information was within the claimants' knowledge. There are many ways that one may give up possession to property and still maintain an interest that can be devised. While the defendant neither admitted nor denied this allegation in her statement of defence, a mere allegation provides no way of ruling out one of those situations which would explain the claimants' belief that their father no longer owned properties addressed in the probated will.

[12] While I do not doubt that Mr. Bedran Sr. once expressed his intention to leave his property to his children that is not the question before the court. The question is whether the probated will accurately reflects Mr. Bedran Sr.'s intentions at the time it was signed. It is undisputed that any previous wills were revoked when Mr. Bedran Sr. and the defendant were married in 2015. As such, even if previous wills were admissible, they would only prove what his intention was at the time they were signed.

[13] While I found all the claimants' witnesses to be credible and their testimony sincere, none of them were present when the probated will was drafted. In his affidavit, Mr. Bedran Jr. reports that he was surprised by the defendant's marriage with his father which supports a finding that Mr.

Bedran Jr. had little insight into the nature of his father's relationship with his wife. Because I believe Mr. Bedran Jr. when he says he had a very close relationship with his father, I find he was in a better position than the other witnesses to have had that insight.

[14] On the other hand, Sr. Justice of the Peace Orlando Espat, who prepared the probated will for signature based on Mr. Bedran Sr.'s handwritten instructions, wrote in his affidavit that Mr. Bedran Sr. asked for his assistance to draft a will that provided for his wife. Mr. Espat also testified that Mr. Bedran Sr. expressly stated that he wished to give his wife his home and other property. The second witness, Ms. Gloria Sanchez, likewise described Mr. Bedran Sr. as providing the same explanation for why he was drafting a new will when he asked her to be a witness.

[15] The following statement in the probated will is not unreasonable given the circumstances and supports a finding that the probated will's contents reflect the testator's intentions to provide for his wife:

> My children will understand the reason why I am
> Giving these properties to my wife, JAKLYN PAMELA POLANCO
> BEDRAN. All of you
>
> have been successful in your lives and education and you are all
>
> blessed. Enjoy what you have and try to share when you feel you can
> with others.

None of the children were resident in Belize. There was also little evidence of anything more than a desire on behalf of the 1st claimant to move to Belize one day and take up farming. Mrs. Polanco Bedran, however, was in Belize and was living in the family home. That Mr. Bedran Sr.'s intentions for what would occur with his estate changed when he got married is not an unreasonable conclusion in light of these circumstances. Moreover, the value of the assets is also not so great that the gift to a sole beneficiary alone raises suspicion.

[16] The conclusion of the handwriting expert is the only compelling evidence that supports a finding that the probated will does not reflect Mr. Bedran Sr.'s knowledge and approval and, therefore, is not duly executed. The expert was not called to testify at the trial. The two reports provided to the court is her entire evidence. She did not examine the original probated will. Like this court, she was provided a copy. She also did not examine the three other signatures on the will. The authenticity of the three other signatures is uncontested. The two witnesses to the probated will and the Sr. Justice of the Peace all testified that they were present when Mr. Bedran Sr. signed the will. The witnesses agreed that Mr. Bedran Sr. signed the probated will after he reviewed the contents and signalled his approval. They each verified that the signature on the probated will was their own and that they signed the document after Mr. Bedran Sr. completed his signature.

[17] While the burden is on the defendant to overcome the suspicion, I cannot draw unreasonable inferences to conclude the probated will is a forgery when I weigh the evidence. For example, Mr. Bedran Sr.'s signature is on a different page than the witnesses' signatures. I do not have the original probated will. All the copies of the probated will in evidence show the witnesses'

signatures on the reverse side of the page with Mr. Bedran Sr.'s signature. If the witnesses' signatures are found on the reverse side of the page, I would need to draw the inference that all the witnesses colluded with the defendant to perpetuate the fraud or ignore the uncontested testimony that the signatures are authentic and conclude that they were also forgeries. I have no evidentiary foundation for either conclusion. Likewise, if the witnesses' signatures appear on a separate sheet, to support a finding that the probated will is a forgery would require me to draw the inference that some or all of the original pages of the probated will were replaced. Such an inference is unreasonable in this case because that argument was not directly pleaded or argued by the claimants.

[18] When the totality of the evidence is considered, I find that Mrs. Polanco Bedran has established that it is more likely than not that Mr. Bedran Sr. knew and approved of the contents of the probated will and that it was signed by him. The defendant's evidence establishes that Mr. Bedran Sr.'s wished to provide for his wife in the event of his death. Two witnesses, whose credibly was unquestioned, who were present when the probated will was signed by Mr. Bedran Sr., testified that those were his stated intentions. The claimants' evidence did not directly challenge this finding. Instead, their evidence merely established that prior to being remarried, Mr. Bedran Sr. had a different intention. Something more than the expert's opinion questioning the authenticity of the signature on the probated will and assertions of impropriety was need to shift the balance in the claimants favour given the preponderance of evidence presented by the claimant in support of due execution.

Have the claimants raised a real doubt to rebut the presumption of due execution on the basis that Mr. Bedran Sr. lacked testamentary capacity?

[19] Because I have found that the presumption of due execution operates in this case, the claimants also have the opportunity to rebut that presumption on the basis that the testator lacked testamentary capacity. The requisite capacity requires that the testator be able to:[9]

> …(1) understand the nature of his act, ie, making a will, and its effects (2) to understand the extent of the property of which he is disposing (3) to comprehend and appreciate the claims to which he ought to give effect. He must not be subject to any disorder of mind as shall "poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties".

Similar to the testator's knowledge and approval, the claimants must raise a real doubt in order to rebut the presumption.[10]

[20] The claimants point to the fact that the probated will purports to devise property that the testator no longer owned and had dealings with during the year preceding death as evidence of lack of testamentary capacity. As with issues of knowledge and approval, something more than a mere assertion is required to rebut the presumption of due execution. There is nothing in evidence to support this claim.

[9] *Key*, *supra* note 2 at para 93 quoting from *Banks v. Goodfellow* (1870) LR 5 QB 549.
[10] *Key*, *supra* note 2.

[21] The claimants further allege that Mr. Bedran Sr.'s poor health status impaired his ability to fully appreciate the consequences of executing a new will. The statement of claim alleges that he suffered from hypoxic encephalopathy as a result of lack of oxygen to the brain, was confined to prolonged bed rest, and that his speech was observed to be incoherent and muddled prior to his death. No evidence was led to substantiate these assertions other than the declaration in the probated will that "I am a very sick man and I will not be on earth much longer" and Mr. Bedran's Sr.'s ultimate death. This statement is too vague to substantiate the claimants' assertion of lack of testamentary capacity.

[22] In their cross-examination of Ms. Gloria Sanchez, a witness to the probated will and a laboratory technician who regularly attended to Mr. Bedran Sr., the claimants raised the issue of Mr. Bedran Sr.'s chronic health conditions as contributing to his impaired testamentary capacity. Ms. Sanchez confirmed that Mr. Bedran Sr. suffered from hypertension and diabetes. She denied having any knowledge of any other ailment that may have impaired Mr. Bedran Sr.'s testamentary capacity. Thus, the testator's statement in his will about his health status could equally be read as referring to his chronic health conditions that are widely known to shorten lifespans.

[23] Witnesses for the claimants did testify that Mr. Bedran Sr.'s behaviour had changed after Mr. Bedran Sr.'s marriage and prior to his death. The witnesses described that he lacked his normal vitality and positivity. While I do not doubt the sincerity of these claims, I am unable to conclude that the information about Mr. Bedran Sr.'s health raises a real doubt as to his testamentary capacity. The challenge for the claimants was to show that at the time the will was signed, Mr. Bedran Sr. lacked testamentary capacity. None of the claimants' evidence speaks to that moment

in time. Few details, if any, were provided as to when these observations were made or how often they were in contact with Mr. Bedran Sr. during that time. The evidence from the 1st claimant that Mr. Bedran Sr.'s behaviour changed appears to have been largely derived from interactions with him while Mr. Bedran Sr. was in the United States. The probated will was signed in Belize. There is no evidence that the 1st claimant was in Belize at the time the will was signed or anytime immediately before or after its signature. It is even more unclear when the claimants' other witnesses last had an opportunity to observe Mr. Bedran Sr.

[23] Moreover, the witnesses to the probated will and the Sr. Justice of the Peace testified that they observed no signs that he was suffering from illness that called into question his mental capacity. Ms. Sanchez, who met with Mr. Bedran Sr. regularly to take his blood including in the days leading up to her witnessing the probated will, also testified that she observed no changes in his behavior. Without evidence that can support an inference that the medical condition that led to Mr. Bedran Sr.'s death or one of his chronic conditions would have impaired his ability to appreciate the consequences of his actions at the time he signed the will, I find the claimants' evidence raises no real doubt about testamentary capacity. The claimants have failed to rebut the presumption of due execution.

Did the testator have the testamentary capacity to create the probated will?

[24] Having found that the claimants have not rebutted the presumption, this question does not arise. Nonetheless, if I am incorrect and a real doubt has been raised, I find that Mrs. Polanco Bedran has proven that it is more likely than not that Mr. Bedran Sr. had testamentary capacity.

The defendant's evidence is contemporaneous with the signing of the probated will. The evidence shows that Mr. Bedran Sr. demonstrated his understanding of the effect and consequences of making his will on three occasions. First, when he approached the Sr. Justice of the Peace to inquire if he could assist with finalizing the will that Mr. Bedran Sr. had drafted. Mr. Bedran Sr. understood that to be enforceable a will requires something more than a handwritten note with his signature. He also explained to the Sr. Justice of the Peace why he wanted a new will and provided notes that reflected his intention to benefit his wife. Second, Ms. Sanchez testified that Mr. Bedran Sr. explained his purpose for obtaining a new will when he attended at the laboratory and requested that she be a witness. Third, all the witnesses testified that Mr. Bedran Sr. read over the will and confirmed it reflected his intentions before signing.

Disposition

[24] The claim is dismissed as the defendant has proven on a balance of probabilities that the probated will of Mr. Bedran Sr. was duly executed. The pleas of forgery and lack of testamentary capacity have not been proven by the claimants. The claimants are ordered to pay prescribed costs to the defendants.

DATED the 12th day of July, 2022.

Justice Patricia Farnese