GRENADA

IN THE EASTERN CARIBBEAN COURT OF APPEAL

HIGH COURT CIVIL
APPEAL NO. 3 OF 1998

BETWEEN

CLARIE HOLAS & MADGE HOLAS APPELLANTS

AND

FRED BELFON RESPONDENT

Before: The Honourable Mr. Satrohan Singh Justice of Appeal
The Honourable Mr. Albert Redhead Justice of Appeal
The Honourable Mr. Albert Matthew Justice of Appeal (Ag.)

Appearances: Mr. Lloyd Noel for the appellants
Mr. Karl Hudson Phillips, Q.C., Mr. Ben Jones and
Mr Alban John with him for the respondent

[November 26, 1998]

JUDGMENT

SATROHAN SINGH JA:

In 1987, Stanley Augustus Belfon (the Testator) made a will. In 1989 he made another will. In 1991, the appellants brought suit against the respondent based on bequests made in the 1989 will, alleging that the 1989 will effectively revoked the 1987 will, which will, had given to the respondent certain bequests now given to the appellants by the 1989 will. The respondent, by way of defence to that suit,

challenged the testamentary capacity of the deceased when he made the 1989 will. St. Paul. J. heard the matter and ruled against the validity of the 1989 will. The appellants have challenged that ruling before us.

The appeal revolves around a question of fact and inferences to be drawn therefrom, whether the Trial Judge was wrong in his finding that he was of the opinion that :-

> Athe Testator Stanley Augustus Belfon at the time of the execution of the 1989 will was in such a condition of mind and memory as to be unable to understand the nature of his act and its effects and the extent of the property of which he was disposing.@

Mr Noel conceded that the Learned Judge properly advised himself on the requisite burden of proof but submitted that he never considered the case of the appellants.

The rule of law relevant to cases of this nature is settled and does not admit

of any dispute and has been acquiesced in by both sides. That rule is that the onus probandi lies in every case upon the party propounding the will, and, he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable Testator. This onus is in general discharged by proof of capacity and the fact of execution from which knowledge of and assent to its contents by the Testator will be assumed. [Pendock Barry v James Butlin 11 Moore, 480].

The burden therefore was on the appellants in this case to prove, having regard to the line taken by the defence, that the Testator, when he made the 1989 will, understood the nature of his act and its effects. That he understood the extent of his property of which he was disposing and that he was able to comprehend and appreciate the claims to which he gave effect. And, with a view to the latter object, that no disorder of mind poisoned his affections, perverted his sense of right or prevented the exercise of his natural faculties. The appellants had to prove that no insane delusion influenced his will in disposing of his property and brought about a disposal of it which, if his mind had been sound, would not have been made. The appellants had to satisfy the conscience of the Court by affirmative proof with something powerful, that the 1989 will was from a free and capable Testator [Alvarez v Chandler (1962) 5 WIR 226.]

The Learned Trial Judge, having in his judgment, properly advised himself of the abovementioned legal position, then dealt with the evidence. He referred to the evidence of the witnesses to the will who testified that at the time they witnessed the will, the deceased appeared normal and that they got the impression that he was normal and balanced and able to reason. He then proceeded to deal with the evidence led on behalf of the respondent on the issue of the Testator=s incapacity.

This evidence came from the respondent (the Testator=s son), Dr. Lloyd Alexis a registered medical practitioner (the Testator=s cousin), Dr Clyne another registered medical practitioner, an affidavit from the Testator=s lawyer Mr Herbert Squires and a medical certificate from a Dr. Jean Thompson also a medical practitioner.

Cumulatively, this evidence presented a powerful factual matrix of senile dementia in the Testator at or about the time of the execution of the 1989 will. It showed that at that time the Testator was 85 years old, his memory was defective and untrustworthy and demonstrated vividly that he was unable to understand the nature of his acts. Without going into the details of this evidence, very briefly, it disclosed that in 1988 the Testator was attacked by three masked men who tied him up. They then doused him with inflammable material and set him on fire. As a result he was hospitalized for sometime. Following his hospitalization, he exhibited symptoms of mental instability, hallucination and senile dementia. Dr. Clyne in February 1989, one month after the execution of the 1989 will, observed symptoms of psychotic behaviour, a loss of sense of reality, and hallucinations. This doctor concluded in February 1989 that the Testator was unable to look after his affairs and that in January 1989 (when he made the impugned will), he was not capable of giving rational decisions as

regards a will. The other evidence all support this evidence of Dr. Clyne. Apart from the very scant evidence of the two witnesses to the 1989 will led on behalf of the appellants, no other evidence was led to contradict the very powerful testimony of these defence witnesses.

Looking at the Trial Judge=s judgment as a whole, I cannot agree with the submission of Mr. Noel that the Trial Judge never considered the case of the appellants. The judgment shows that he considered the relevant prima facie evidence led on behalf of the appellants on the material issue. He then considered the evidence led on behalf of the respondent as it related to said controversial issue and then came down in favour of the respondent.

For these reasons and especially because of the massive power of the evidence led by the respondent, I agree with the Judge=s implied conclusion that the appellants did not discharge the burden placed on them. They did not provide affirmative proof that could have satisfied the conscience of the Court that the 1989 will was the product of a free and capable Testator.

The appeal is therefore dismissed with costs to the respondent to be taxed if not agreed. The judgment of the Trial Judge is affirmed.

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Satrohan Singh

Justice of Appeal

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Albert Redhead
Justice of Appeal

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Albert Matthew
Justice of Appeal

(Ag.)