

**IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2014/0266

**IN THE MATTER OF THE ESTATE OF MARK DOVER LATE OF GOODWILL IN THE
PARISH OF ST GEORGE IN THE COMMONWEALTH OF DOMINICA, DECEASED**

BETWEEN:

[1] **MATTHIAS DOVER** by his lawful attorney **Natasha Dover**
[2] **MICHAEL DOVER** by his lawful attorney **Natasha Dover**

Claimants

and

[1] **WYCLIFFE CULZAC** as personal representative of **Mark Dover**,
deceased
[2] **YVETTE DAVIS** as personal representative of **Mark Dover**, deceased
[3] **MAYIE DOVER**

Defendants

Appearances:

Ms. Cara Shillingford for Claimant

Mr. David Bruney for Defendants

2015: May 11;
September 21; 29;
October 30
2016: July 11

[1] **Stephenson J:** Mark Dover deceased was the father of Mathias Dover and Michael Dover ('the claimants'). He was also the father of Mayie Dover the third named defendant in this matter. Wycliffe Culzac and Yvette Davis were the persons named as executors in the alleged will of Mark Dover.

- [2] The claimants reside overseas in the United States of America and have in fact been doing so for many years prior to their father's death.
- [3] Mark Dover died on 7th May 2013 at the Princess Margaret Hospital. Michael Dover the second named claimant came to Dominica and attended his father's funeral.
- [4] After the burial of his father, Michael claims that he made enquiries from his father's sister Dorothy and his sister Mayie whether his father left a will and he was informed by them both that he did not. Subsequently, he says that he was informed by Mayie that yes, that their father left a will.
- [5] Michael contends that Mayie told him that the will was made at a lawyer's office but did not tell him which lawyer, Mayie denies this. Michael says that he became suspicious after his sister Mayie told him first that there was no will and then that she subsequently produced a will which she says was prepared in a lawyer's office, that upon examination of the will there was nothing to say or show that it was indeed prepared in a lawyer's office.
- [6] On 24th May 2013 Michael filed a caveat against his father's estate which caveat expired on 24th November 2013.
- [7] On the 31st December 2013 the grant of probate was made in the estate of Mark Dover.
- [8] The claimants contend that their father Mark Dover did not make a will and that he always stated that he did not believe in wills and had previously refused to make a will. That he always said during his lifetime that upon his death his property would go to all three of his children.

- [9] The claimants also contend that the purported will was never signed by their father or by someone else at his direction, and that the purported will was not signed nor acknowledged in the presence of two or more attesting witnesses present at the same time.
- [10] The claimants also contend that the testator lacked knowledge and approval of the content of the alleged will as the deceased was blind and during the last three months of his life which would include the time that the alleged will was made and that he was incapable of having a coherent conversation with anyone around him during that period and therefore in the circumstances he would have been unable to give instructions to make a will.
- [11] It is the claimants' case that another factor giving rise to suspicion as to the circumstances surrounding the making of the will are that the deceased's granddaughter Roslyn Dover and her children lived in the house with him that she had a close relationship with her grandfather and it was felt that he would not have made a will which would result in her being homeless.
- [12] The claimants also contend that the will was made after the death of Mark Dover.
- [13] The claimants have brought these proceedings and seek to have the court:
- (1) Declare the will invalid for :
 - a) want of due execution; lack of knowledge and approval of the contents of the will;
 - b) suspicious circumstances and
 - c) lack of mental capacity.
 - (2) Revoke the grant of Probate and declare that the deceased died intestate and to order that a grant of Letters of Administration in the estate of Mark Dover be issued to them.
 - (3) Order that the defendants provide them with an account of all monies and other properties forming part of the estate of Mark Dover that have come

into their hands or the hands of their agents or other persons acting under or through them.

- (4) Award damages to them and that costs be paid by the defendants personally.

[14] The defendants on the other hand contend that the will is valid and that when Mark Dover made the will he was of sound mind and memory. The defendants maintain that the will was validly executed and at the time of doing so Mark Dover knew and approved of the contents of the will which was made by him and upon his instructions.

The Issues

[15] The issues which arise in this case can be stated as follows:

- (1) Whether the alleged will of Mark Dover was valid. To decide that it would be necessary to consider the circumstances in which the will was executed and witnessed;
- (2) Whether the circumstances surrounding the making of the alleged will were suspicious giving rise to an inference that the will is invalid.
- (3) Did Mark Dover have the testamentary capacity at the time of making the purported will;
- (4) Whether Mark Dover knew and approved the contents of the will.

[16] Section 8 of the Wills Act¹ states

“No will shall be valid unless it is in writing and executed in the manner hereinafter mentioned, that is to say, it is signed at the foot or end thereof by the testator or by some other person in his presence by his direction, and the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and the

¹ Cap 9:01 of the Laws of Dominica

witnesses attest and subscribe the will in the presence of the testator, but no form of attestation shall be necessary.”

The Evidence

- [17] A number of witnesses have given evidence on behalf of the parties. Reference will be made to the evidence which was considered necessary to explain the court's conclusions. It is to be noted that failure to make specific mention of any item of evidence does not, mean that it has been ignored or that there has been a failure to take it into account. Similarly, a good many issues of fact have been raised by both counsels, which, in the court's view, are not necessary to discuss in order to resolve or to decide the main issues in the case at bar.
- [18] The first named claimant, Okang Dover and Rosalind Dover the claimants' nephew and niece respectively gave evidence in support of the claimants' case and the three defendants each gave evidence on behalf of the defendants. There was a witness summary filed on behalf of one Okang Dover however he did not attend court to be cross examined and his evidence is therefore not taken into consideration. It is to be noted that the claimants contend that this Okang Dover to which the defendants refer does not exist.
- [19] A number of documents including the death certificate of Mark Dover, The grant of Probate, copies of the medical records of Mark Dover and the birth certificates of the claimants were placed before the court.
- [20] The following facts are not contested:
- (1) That Mark Dover is the deceased father of Matthias, Michael and Mayie Dover.
 - (2) That he died on 7th May 2013 at the Princess Margaret Hospital.
 - (3) The house at 16 Church Lane Goodwill and the account at National Cooperative Credit Union (NCCU) essentially comprised the entire estate.

- (4) That in the alleged will Mark Dover left his entire estate to the third named defendant Mayie.
- (5) On 24th May 2013, Michael Dover filed a caveat at the Registry to prevent any sealing of a grant of probate in the estate of Mark Dover. The said caveat expired on 24th November 2013.
- (6) On 28th November 2013 an application was submitted for the grant of probate to the estate of Mark Dover which grant was sealed on 31st December 2013.

The Validity of the Will – was the Will Validly Attested?

[21] In relation to the circumstances in which the will was attested I heard from the three defendants, the two witnesses to the will, and the beneficiary of the will. Natasha Dover also gave evidence pertinent to the validity of the will.

Miss Yvette Davis

[22] Miss Davis the second named defendant in her witness statement said she was present on 20th day of March 2013 when the late Mark Dover executed his will by using his thumb. She said that the following persons were present Wycliffe Culzac, Mayie, and Okang Dover who was the nephew of the deceased.

[23] Miss Davis said in her witness statement that Okang Dover read over the entire contents of the will to Mark Dover who appeared to fully understand the contents of the will. She said that following the reading, Mark Dover executed the will.

[24] Under Cross examination, Miss Davis said that the will was signed by three other persons Wycliffe Culzac, Mayie Dover and Okang Dover besides her. She said the will was signed at the residence of Mark Dover and that all the persons she named were there. When shown the will she acknowledged that it was the document she signed but she was unable to find the signatures of Mayie and Okang.

- [25] Under cross examination Miss Davis said nobody said anything much to Mr. Dover before he signed the will, she also said someone read something over to Mr. Dover before he signed the will.
- [26] Miss Davis under cross examination also said that the will was signed in the sitting room of Mark Dover's home, where she met Mark Dover and Mayie sitting. She said that all four of them were in the sitting room with Mark Dover when he signed the will.
- [27] Miss Davis under cross examination said that the will was signed in the late afternoon.
- [28] Miss Davis also said that Mark Dover suffered from some physical ailments which affect the elderly but was alert at all material times and never showed any signs of deterioration of mental health in her presence. She acknowledged that his eye sight was failing.
- [29] As it regards Okang Dover, Miss Davis said that she knew him to be a person working at sea. It is noted that the defendants contend that he is unavailable because he works at sea.

Wycliffe Culzac

- [30] Mr. Culzac was the other witness to the alleged will and in his witness statement he said he was present when the will was signed by Mark Dover at Mark Dover's home on 20th March 2013. He too says that Mayie, Miss Davis and one Okang Dover were present. He said that Okang Dover who was the nephew of Mark Dover read over the will to Mark Dover who signed the will after that.

[31] This witness stated he remembered the date that he went to sign the will but cannot remember the time of day that he went to sign the will but he knew he was going there on that day to sign the will at the invitation of Mayie. Mr. Culzac told the court that when he got there Mark Dover, Yvette, Mayie and another fellow Okang was there. He said that he went into the house and the will was signed in the living room and that they were all in the living room when the will was signed.

[32] Later in his cross examination Mr. Culzac said that Mayie came for him to go to her father's house but he cannot remember where he was, that he was somewhere on the street. This court finds it passing strange that Mr. Culzac is sure of the date that the will was signed but could not remember where he was when he met Mayie on 20th March 2013.

[33] Mr. Culzac under cross examination told this court that it is Mayie who asked him to sign the will but he cannot remember when he was asked to sign the will. He also cannot remember if the will was signed in the morning or in the afternoon.

[34] Mr. Culzac said he was a regular visitor to Mark Dover's home but he did not think that Mark Dover was blind on the day he signed the will.

Mayie Dover

[35] The court also heard from Mayie Dover. She said that on the day that the will was signed Mr. Culzac lived in Boetica and he travelled by bus to Roseau and that he arrived at her father's house that day by bus. She did not say she went to get him anywhere.

[36] In her witness statement Mayie said that when her father signed his will she was present along with Wycliffe Culzac, Okang Dover and Yvette Davis. She said she was present when Okang read over the will to her father who appeared to understand and agree with the contents. Under cross examination Mayie said that

“before my father put his thumb print nobody said anything to him before he put his thumb print on the document”.

[37] Mayie also was adamant that the will was signed by her father in the bedroom that he was sitting on his bed when he signed the will. That they were all in the bedroom when the will was signed.

[38] In cross examination, Mayie told the court that at her father’s request she contacted both Mr. Culzac and Miss Davis by phone to sign the will. Miss Davis on the other hand said that she did not speak to Mayie about signing the will on the phone.

[39] Mayie told this court under cross examination that the will was handwritten and that her father asked her to go photocopy it for him, to print it for him, she also said that the document was handwritten but it was photocopied or typed. She also said that when her father put his thumb print on the handwritten document. It is noted that the will with the thumb print that was exhibited to the court and presented for probate was a type written document with inserts. There is no handwritten document before the court.

[40] Mayie also told this court that on the day that the will was signed her father had the document. Miss Davis told this court that the first time she saw the will was on the 20th March 2013 at the time Mayie had the will.

[41] During her testimony Mayie said that her father had failing sight when being cross examined about the will, she also said when cross examined about her application for the housing lot behind her father’s house that her father was blind.

[42] Mayie also told this court that when she took her father to the hospital on 24th March 2013 he was not staring blankly that he was speaking, that he had a mild stroke and he was getting seizures. However a review of the medical records

submitted by the claimants show that Mark Dover was “staring blankly” and “unresponsive”

Natasha Dover

[43] Natasha is the daughter of the first named claimant and niece of the second named claimant and the third named defendant. She is the granddaughter of Mark Dover.

[44] Natasha in her witness statement said that she, her sister Roslyn and her cousin Okang were raised by their grandfather Mark Dover. She said that she remembered that in the month of March 2013 her grandfather would stare blankly for several hours and that he would sometimes call out the names of Roslyn’s children Roselle, Akelle, Donelle and Chevelle expecting them to answer. That Chevelle lives overseas.²

[45] Natasha also told the court that in March 2013 her grandfather was 85 years old and suffered from frequent lapses in memory of persons and events. She said that her grandfather was also blind and had difficulties communicating.³

[46] In commenting on the evidence of Mayie Dover, Natasha said it was not true that her grandfather was mentally alert as stated by Mayie. She also said that her grandfather would not have remembered his birthday as stated. She said that her grandfather was like in a mental state calling out names that she could not recognize and for her sister’s child Chevelle. She also said that her grandfather was blind for a number of years.

[47] Under Cross examination Natasha was adamant that in May 2013 she visited her grandfather everyday including the day that he died. She also stated that her

² Paragraph 18 of the Witness statement of Natasha Dover filed on the 30th April 2015.

³ Ibid Paragraph 19

grandfather did not believe in making wills and he always said that he was leaving his house to his children and grandchildren.

Court's Considerations as to the Validity of the Will

[48] It is a well-established principle of law that a person propounding a will must be able to show that at the time of the execution of the will, the testator knew and approved the contents of the will. The test to be applied is whether or not the testator knew of the contents of the will, the test is an objective one and the standard of proof is on a balance of probabilities.(**Fuller –v- Strum**)⁴.

[49] If the will was prepared and attested to by the testator where there are no suspicious or unusual circumstances, the burden of establishing the knowledge and approval of the testator is easily discharged. However, where there are circumstances which can be considered suspicious or unusual the court's jurisdiction will be excited and the burden of proving that the testator knew and approved of the contents of the will will not be so easily discharged.

[50] In the case of **Fuller –v- Strum**⁵ **Peter Gibson LJ** said

“Probate proceedings peculiarly pose problems for the court because the protagonist, the testator, is dead and those who wish to challenge the will are often not able to give evidence of the circumstances of the will. The doctrine of 'the righteousness of the transaction' whereby the law places a burden on the propounder of the will, in circumstances where the suspicion of the court is aroused, to prove affirmatively that the deceased knew and approved of the will which he was executing, is a salutary one which enables the court in an appropriate case properly to hold that the burden has not been discharged.

But 'the righteousness of the transaction' is perhaps an unfortunate term, suggestive as it is that some moral judgment by the court is required. What is involved is simply the satisfaction of the test of knowledge and approval, but the court insists that, given that suspicion, it must be more clearly shown that the deceased knew and approved the contents of the will so that the suspicion is dispelled.”⁶

⁴ [2002] 2 ALL E R 87

⁵ Op cit

⁶ ibid at 97

[51] The learned judge went on to say

“But in a case where the circumstances are such as to arouse the suspicion of the court the propounder must prove affirmatively that knowledge and approval so as to satisfy the court that the will represents the wishes of the deceased. All the relevant circumstances will be scrutinized by the court which will be 'vigilant and jealous' in examining the evidence in support of the will”⁷

[52] In the present case there is now questions as to whether or not the will was duly executed by the testator and whether he had the full testamentary capacity as the claimants contend on the date that the will was supposedly attested the testator was not of good health or capable of responding so as to attest the said will.

[53] It is trite law that for a will to be validly attested to the testator must sign the will in the presence of the two witnesses who are also required to sign the said will in the presence of each other and the testator. Now that is in doubt before this court, as the witnesses place the testator at different places when he signed the will which does raise significant doubt in the mind of this court as to whether their evidence before the court is truthful.

[54] The court is also not satisfied on the balance of probabilities that there was anyone called Okang Dover who is the nephew of Mark Dover. The defendants have not really produced any evidence that he indeed exists and this is to be weighed against the evidence of Okang Dover the grandson of Mark Dover.

[55] Okang told the court that as far as he knows and he has inquired that he is the only Okang Dover in the family he also told the court that he has enquired from the alleged brothers and sisters of Okang Dover whether they have a brother by the name of Okang Dover and they have said that there have no brother with that name.

⁷ Ibid the Learned Judge quoted (*Barry v Butlin (1838) 2 Moo PC 480 at 483, 12 ER 1089 at 1090 per Parke B*).

- [56] Under cross examination Okang told the court that he knew Clayton Dover very well and was aware that he had many children.
- [57] Okang also told this court about his grandfather's wishes that his house would be left to all his children and grandchildren. He also spoke about trying to get his grandfather to make a will and his grandfather refusing to do so, on the grounds that he did not believe in making wills.
- [58] The claimants submit that the will was created in suspicious circumstances created by the very fact that the third defendant is the sole beneficiary of what is essentially Mark Dover's estate. In fact the claimants urge the court to find that the will was in fact written by the third named defendant and not some unknown third party as the third named defendant is seeking to have it accepted and believed.
- [59] Michael Dover in his evidence told this court that he asked Mayie if their father left a will and he says Mayie told him no. Under cross examination Mayie admitted that she told her brother that their father left no will and that that was a lie.
- [60] Mayie told this court that the will was made by a friend of the father however her father never told her who it was that prepared the will. She told the court that the will was prepared in 2013 but she could not remember what date it was prepared neither could she recall how long before it was signed that it was prepared. She later said that the first time she saw her father's will it was when he did it before he died about a month before he put his print on it. She said her father showed her the document. This is to be considered against the background that Mark Dover was blind and elderly. The court does not accept this evidence from Mayie.

- [61] The claimant also contends that the fact the date of the will was printed whilst the names of the executors were hand written supports the fact further that the will was created and executed in suspicious circumstances. The court accepts this.
- [62] The executors and Mayie deny that the Mark Dover's will is invalid. They contend that the will was executed within the terms and requirements of The Wills Act⁸. The defendants also contend that on the day that Mark Dover executed his will it was read over to him by his nephew Okang Dover and that he appeared to understand the contents of the will before he executed the will.
- [63] They also contend that Mark Dover was in his right senses and mind and was aware of his actions and of the contents of the will.
- [64] The defendants urge the court that the evidence adduced by them establishes that sections 8 and 10 of the Wills Act⁹ have been complied with.
- [65] Learned Counsel Mr. David Bruney on behalf of the defendants urged the court to accept the defendant's evidence that the will was duly read over to Mark Dover and executed by him in the presence of his two witnesses who were all present when they signed the document. That the conduct of the first and second defendants was carried out in accordance with the Wills Act and the relevant case law.
- [66] Section 10 of The Wills Act¹⁰ speaks to when the will shall be deemed to be valid. The defendants emphasized that the section of the act which spoke to "it is apparent on the face of the Last Will and Testament that the deceased intended to give effect by such signature to the writing signed as his will."

⁸ Op cit

⁹ Op cit

¹⁰ Op cit

Conclusion

- [67] The evidence of the defendants who bore the burden of proof in this matter all be it on a balance of probabilities have failed to persuade this court that the purported will of Mark Dover was attested within the provisions of section 8 of the Wills Act. The evidence of the defendants in this regard was fraught with inconsistencies making it impossible for the court to accept their case that Mark Dover did in fact sign the will in the circumstances that they say or at all.
- [68] The court is also not convinced that there was an Okang Dover the supposed son of Clayton Dover present at the house in March of 2013 to have read over the alleged will as stated by the defendants. The Court rejects the defendants' evidence in this regard.
- [69] This being so it is the finding of this court that the alleged will of Mark Dover as Probated by the first named defendant was not attested in compliance with section 8 of the Wills Act and therefore it is invalid.
- [70] As to whether Mark Dover had testamentary capacity or was aware of the contents of the will need not be discussed, suffice it to say that based on the evidence presented to this court, the defendants have also failed to prove to this court even on the balance of probabilities that Mark Dover was aware of his actions and the contents of the will.
- [71] The defendants have failed to prove their case as is required by law to prove their case on the balance of probabilities and in the circumstances judgment will be entered for the claimants. Therefore the actions of the first and second defendants as executors of the estate of Mark Dover is null and void,
- [72] It is hereby declared that the alleged will of Mark Dover is null and void in that it was not executed within the confines of section 8 of the Wills Act.

- [73] It is also declared that the said Mark Dover therefore died intestate and the heirs of his estate are to be decided according to the provisions of the Intestates Estates Act.
- [74] It necessarily follows that the first and second defendants, having assumed the role of executors, and having administered the estate *de facto*, must account to the heirs-at-law of Mark Dover deceased for all of their dealing with the said estate of Mark Dover deceased.
- [75] Costs of this matter to be that of the claimants; to be assessed if not agreed
- [76] I wish to thank counsel for their assistance in the matter

M.E.B. Stephenson
High Court Judge