BRIEFING NOTE

Gill v RSPCA [2010] EWCA Civ 1430

Introduction

This is the long running, and much publicised, dispute between Dr. Gill and the RSPCA concerning the validity of the will of Dr. Gill's mother in favour of the RSPCA. On 14 December 2010 the Court of Appeal handed down its judgment whereby it found that the will was invalid for lack of knowledge and approval.

The judgment is set to be one of the leading cases on lack of knowledge and approval. It also demonstrates the problems that charities, particularly those with no previous relationship with the testatrix, may have in defending such a claim.

Facts

Dr. Gill's parents (Mr. and Mrs. Gill) were farmers. She was their only child. She worked as a university lecturer and lived with her husband and their son in a house adjoining the farm.

In early 1993, Mr. Gill instructed a solicitor to prepare matching wills for himself and Mrs. Gill. The two draft wills were sent to Mr. and Mrs. Gill. They then attended the solicitor's offices where the wills were read over to them and duly executed.

The effect of Mrs. Gill's will was to leave the residue of her net estate to the RSPCA. She expressly stated in the will that no provision was made for her daughter "because I feel she has been well provided for by me over a long period of time."

The personalities of Mr. and Mrs. Gill were highly relevant. Mr. Gill was a domineering, opinionated man who lost his temper easily. Mrs. Gill suffered from severe agoraphobia and panic disorder.

Dr. Gill had enjoyed a good relationship with both of her parents, in particular her mother for whom she had done a great deal. In contrast, there was no apparent reason why the RSPCA was selected as a beneficiary; indeed, there was evidence that Mrs. Gill had made derogatory comments about the RSPCA, calling them "a bunch of townies".

Mr. Gill predeceased his wife in 1999. Mrs. Gill died 7 years later in August 2006. On her death Dr. Gill issued a probate claim challenging the validity of her will on the grounds of lack of knowledge and approval and/or undue influence. Alternatively she claimed an interest in the farm based on proprietary estoppel.

The First Instance Decision

At first instance Mr. James Allen QC sitting as a Deputy High Court Judge rejected the argument that the will was invalid for lack of knowledge and approval, but found in Dr. Gill's favour on both the undue influence and proprietary estoppel points.

The RSPCA appealed the decision on undue influence and proprietary estoppel and Dr. Gill cross-appealed the decision on knowledge and approval.

The Court of Appeal Decision

Lord Neuberger MR gave the leading judgment in the Court of Appeal. The judgment focuses on the issue of lack of knowledge and approval, since Dr. Gill's success on that issue rendered the other issues academic.

It was held that "as a matter of common sense and authority" the fact that a will had been properly executed, after being prepared by a solicitor and read

over to the testatrix, raises a very strong presumption that the testatrix knew and approved of the contents of the will. That presumption is reinforced by a policy argument: if the courts are too ready to accept arguments of lack of knowledge and approval, that would undermine the fundamental principle that testators are free to leave their estate as they choose, and would encourage litigation.

Interestingly, Lord Neuberger disapproved of the traditional two-stage approach in determining lack of knowledge and approval claims (where stage 1 is to ask whether there are circumstances which excite the suspicion of the court, and, if so, stage 2 is to ask whether those suspicions are dispelled). Instead, it was held that generally the better approach is simply to ask "whether or not those propounding the will have discharged the burden of establishing that the testatrix knew and approved the contents" of the will.

On the evidence, it was held that the RSPCA had not discharged the burden of proving that Mrs. Gill knew and approved of the will.

The key evidence in support of this conclusion was the medical evidence about Mrs. Gill's agoraphobia. The evidence suggested that she feared leaving the farm and that, if she met strangers away from the farm, she would suffer a severe degree of anxiety which was likely to inhibit her ability to concentrate and absorb information.

In light of that medical evidence, it was held that Mrs. Gill would not have appreciated the terms of the will when it was read out to her by the solicitor prior to its execution.

The Court of Appeal overturned a finding made at first instance that the solicitor had read each clause out separately to Mrs. Gill. It also overturned a finding that Mrs. Gill had attended an earlier meeting with the solicitor, and commented that even if she had attended, that fact would not dispel the suspicion that she did not know and approve of the contents of the will in light of the medical evidence.

Lord Neuberger concluded that "There may be a danger of this decision being seen as something of a green light to disappointed beneficiaries, and in particular to close relatives of a testatrix who have not benefited from her will, to challenge the will even where it has been read over to the testatrix, or to appeal a full and careful first instance decision upholding a will's validity. It is therefore right to emphasise that the facts of this case are quite exceptional."

Discussion

This was clearly an exceptional case in light of the medical evidence, but some useful points emerge from it.

First, the mere fact that a will has been read over to a testator prior to its execution is not conclusive of knowledge and approval, but only gives rise to a presumption. That presumption can be rebutted, particularly where the testator suffers from a medical condition affecting their cognitive abilities. A solicitor taking instructions for a will should therefore enquire into the testator's medical history.

The decision also suggests that if the solicitor had read over the clauses of the will separately to Mrs. Gill, rather than reading the entire will and then asking whether she had any queries, that may have been sufficient to justify a finding of knowledge and approval. If this is done, it would obviously be prudent to keep an attendance note recording that fact.

In terms of the law, whilst the Court of Appeal suggested that generally the correct approach was to ask whether those propounding the will had discharged the burden of proving knowledge and approval, it must remain the case that due execution of an apparently rational will would ordinarily satisfy that burden. Thus it seems that the initial burden will still lie on the person challenging the will to adduce prima facie evidence of lack of knowledge and approval, and only then will the Court of Appeal's general rule apply.

The decision is also unusual in that the Court of Appeal was willing to reverse findings of fact made at first instance, notwithstanding its description of the first instance decision as "full and careful".

The decision serves as a salutary lesson for any charities wishing to defend probate claims. A charity will usually have had no involvement in the will making process and will therefore need to consider very carefully whether to defend a will made in its favour. It will also need to consider whether it can afford the bad publicity which may follow, as it did for the RSPCA in this case.

It will be disappointing for practitioners that the Court of Appeal did not deal with the other points relating to undue influence and proprietary estoppel. Undue influence is notoriously difficult to establish in the probate context, and so it would have been interesting to have seen whether the Court of Appeal upheld the first instance decision that Mrs. Gill's will was invalid on that ground.

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