

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
NEWCASTLE UPON TYNE DISTRICT REGISTRY

IN THE ESTATE OF ABBIE HINCH DECEASED

The Combined Court Centre
The Quayside
Newcastle Upon Tyne NE1

Date: 17 January 2013

Before :

His Honour Judge Behrens
sitting as a Judge of the High Court in Newcastle Upon Tyne

Between :

(1) STEPHEN PAYNTER
(2) VICTORIA DARLING
- and -
FRANCIS ARTHUR HINCH

Claimants

Defendant

John Critchley (instructed by **Colemans ctt**) for the **Claimants**
Charles Holland (instructed by **David Auld & Co**) for the **Defendant**

Hearing dates: 12th and 13th December 2012

Judgment

Judge Behrens:

1 Introduction

1. This is a probate action involving the devolution of the estate of Abbie Hinch (“Abbie”) who died on 6th April 2007. Abbie had four children three of whom are parties to this action – Stephen Paynter (“Stephen”), Victoria Darling (“Victoria”) and Francis Arthur Hinch (“Frank”). The fourth child (“Anthony”) died before her.
2. Abbie made a number of wills but the two most relevant to these proceedings are dated 24th January 1996 (“the 1996 Will”) and 26th July 2004 (“the 2004 Will”).
3. The 1996 Will was prepared by Keith Thompson, a solicitor practicing in Amble, Northumberland. It is a short document. Under clause 2 Victoria is appointed as sole executrix. Under clause 3 Abbie made a number of legacies which may be summarised. Two specific pieces of jewellery were left to Frank; the remainder of the jewellery was left to Victoria. Specific legacies of £1,000 were left to two of Anthony’s children. Under clause 3(e) she left the contents of her bank accounts to her three children equally. Under clause 4 she left the residue of her estate equally to her three surviving children.
4. The 2004 Will was prepared by a firm of will writers – Joseph Michael Associates Ltd (“JMA”) which traded from premises in Middlesex but advertised nationally. Under clause 2 Frank is appointed as the sole executor. Under clause 4 the whole of the estate is left to Frank with a gift over in default to Stephen and Victoria.
5. Probate of the 2004 Will was granted to Frank on 12th December 2007. In these proceedings Stephen and Victoria challenge the validity of the 2004 Will. Accordingly they seek revocation of the grant of probate and a grant in solemn form of the 1996 Will. The sole ground of challenge is that Abbie did not know and approve the contents of the will when she executed it.
6. Frank resists the claim. He contends that Abbie did indeed know and approve the contents of the 2004 Will when she executed it.

2 The Facts

2.1 Background

7. Abbie was born on 2nd October 1930. She had two children with Anthony Wood – Stephen (d.o.b 5.10.1953), and Anthony. In 1963 Abbie left Anthony Wood as a result of his violence and alcoholism. In 1968 Abbie married Arthur Hinch and had two further children – Victoria (d.o.b 11.12.1968) and Frank (d.o.b 14.4.1971).
8. There is some confusion about dates but doing the best I can from the witness statements and the evidence at the trial the background chronology can be summarised:
 1. Initially Abbie lived in the North East. Stephen refers to her living in Camois and Blyth until 1963. Frank refers to his early life being spent in Acklington.
 2. All four children initially left home at about the age of 16.
 3. In 1985 or thereabouts Anthony died from leukaemia. He was married and left a widow and 2 children.
 4. In 1986 Abbie was diagnosed with breast cancer. She had operations in 1986 and 1992. Lung secondary tumours were discovered in 1996 and she had a course of chemotherapy and cytotoxic drugs. Thereafter the progress of the disease was remarkably slow and she remained in a stable state for many years. In addition she had quite advanced

osteoarthritis particularly of the knees which caused considerable pain. Her osteoarthritis led to poor mobility and she relied on a wheelchair for mobility out of the house from around 2001.

5. On a date which is not clear Abbie and Arthur left the North East to live in Perry, Huntingdon, Cambridgeshire. Arthur worked at the local prison as an engineer.
6. On 24th June 1990 Arthur died (aged 52). Shortly before he died, Frank (then aged 18 or 19) went back to live with his parents.
7. In about 1996 Abbie moved back to the North East to live at 42 Middleton Street, Amble, near Morpeth. The precise date is not clear, but she became the registered proprietor of that property on 16th January 1996. At that time Victoria, who was married with two very young children, was living about 2 miles away in Walkworth. Victoria visited her mother practically every day.
8. On a date which is not clear but was probably later in 1996 Frank gave up his job in Godmanchester and came to live with his mother in Amble as her carer. He remained her carer until she died in 2007. Victoria left the North East in 2001 or 2002 and moved back south. Thereafter Frank was the only child of Abbie living in the North East.
9. It is common ground that Stephen and Victoria kept in contact with their mother whilst living in the south. There were frequent phone calls and they and Stephen's daughter Haley visited Abbie on a number of occasions each year. Abbie's 2006 diary shows something like 8 visits from Victoria, Stephen or Haley during the course of the year. There is no doubt that Abbie remained on good terms with them, was pleased to be visited by them and loved them.
10. It is also common ground that Frank's services as a carer were both valuable and necessary. Until the year when she died Abbie remained mentally alert. Frank said that Abbie told him what she wanted him to do and he did what she had asked. In cross-examination Stephen agreed that this was pretty much the case.

2.2 The wills

9. It is not known whether Abbie made any wills before 1990. It is however known that she made wills on 3rd October 1990 (when she was living in Perry), on 24th January 1996 (shortly after she had moved up to Amble) and the disputed will on 26th July 2004.

The 1990 Will.

10. This is a professionally drawn document. It does not appoint any of her children as executors. It makes the same specific bequests of the jewellery as in the later 1996 Will. It provides for pecuniary legacies of £500 each to Anthony's two children and £500 each for Stephen's two children – Haley and Bradley. The residue was to be divided between Frank and Victoria. Thus it can be seen at that time Abbie was not treating her three living children equally.

The 1996 Will

11. I have set out the terms of the 1996 Will in the Introduction and shall not repeat them. It was, as I have noted, made very shortly after Abbie moved up to Amble and before Frank moved up as her carer. Victoria told me that she knew she was to be an executrix of the Will as her mother went through it with her. Her mother said on that and subsequent occasions that she wanted everyone to be equal.

The 2004 Will

12. The 2004 Will was signed by Abbie on the same day as she executed an Enduring Power of Attorney (“EPA”) in favour of Frank which had also been prepared by JMA. Both the Will and the EPA were witnessed by David Garrett and Joanne Lundy. Only one witness was necessary for the EPA and someone has crossed out Joanne Lundy’s signature. Although nothing turns on it the EPA is incomplete in that Part C which ought to have been signed by Frank in the presence of a witness after his mother had signed was never completed.

13. I have already set out the effect of the 2004 Will and will not repeat it. It is however said to be material that the Will records Abbie’s date of birth as 2nd October 1940 whereas she was in fact born on 2nd October 1930.

JMA

14. Little is known about JMA. As already noted it carried on business as Will Writers from offices in Edenbridge, Kent but advertised nationally. The Company has been compulsorily wound up and dissolved.

15. After Abbie’s death Frank discovered three documents associated with JMA. The first was a business card presented by Ray Grove (giving his telephone number). When he gave evidence Frank said that he remembered a visit from Ray Grove. He may have visited twice. Frank said that although he was present in the house he was not involved in the conversation. He made the tea.

16. Frank has no recollection of what was said about the Will though in his witness statement (paragraphs 12 and 13) he appeared to recollect a conversation about the EPA. He had no recollection in organising Ray Grove’s visit though he accepted that if his mother had asked him to phone he would have done so.

17. Attempts by the parties to trace Ray Grove and to obtain any notes of any instructions that he might have made at the time have proved fruitless.

18. The second document is an undated two page pro forma letter from JMA which enclosed the (draft) Will in final form ready to be signed in the presence of two independent witnesses. The letter contained detailed (and accurate) instructions about signing the Will and gave an example as to how it should be done.

19. The third document gave detailed (and accurate) instructions as to the execution of the EPA.

The Attesting Witnesses.

20. As already noted the 2004 Will was witnessed by David Garrett and his partner Joanne Lundy. Each gave evidence on behalf of Frank of the circumstances in which the 2004 Will was signed. Both gave evidence clearly and had a reasonable recollection of the events when the Will was signed. I have no difficulty in accepting each of them as honest and reliable witnesses.

21. David Garrett met Frank in 1996 or 1997 probably in the Pool room in the pub at Amble. He said that he saw Frank perhaps a couple of nights a week until he started working as a chef. He did not describe Frank as a heavy drinker – 5 or 6 pints of an evening. He would visit Frank’s house in Middleton Street. Frank would visit his. He would help if Frank needed anything doing round the house. He would call round to see how Abbie was.

22. Frank gave David Garrett a ring one evening and asked if Joanne and he could do him a favour by calling in at the house and witnessing his mother sign a new will. Arrangements

were made for them to visit a couple of days later. They called down – at about teatime – had a cup of tea and witnessed the signing of the Will.

23. My note of David Garrett’s evidence includes:

Frank and Abbie were there. There might have been someone else I really cannot remember. Everything happened in the living room.
Abbie was in the chair behind the living room door as you walk in. There was a small table beside her. There was a living room settee. I think that is where we sat.
She was sitting there. She had the papers on the table in front of her.
She was expecting us. We asked how she was doing. I think she said it was a fair kind of day.
We sat down. Frank was sorting out drinks in the kitchen. We sorted out the documents
We signed the EPA first and the Will second
Originally Frank asked me to come to witness the will.
I understood it was a will. I was not told anything about the contents before I arrived.
After we had signed she explained what had been changed.
She said she was leaving the house to Frank because he had spent many years looking after her. She wanted her jewellery and personal items to be shared amongst her children and grandchildren.
Frank was about but I do not think he was about in the room.
No other conversation at this point
I do not believe I was asked about the jewellery
Abbie signed it before me. I signed it then Joanne signed.
We all used the same pen.
It all took about 20 minutes including having a cup of tea

Joanne Lundy’s evidence corroborated that of David Garrett. My note of the relevant part of her evidence reads:

Abbie said what the changes were
I don’t think that anyone else was there. I would remember if anyone else was there.
I do have a clear recollection of what happened.
The living room was quite a big living room. Behind the sofa was a cabinet. There was a chair next to the window – a telly in the corner.
I did not read either of the documents. The EPA was signed first
We were told we were witnessing the will when we signed. Abbie said:
 Could we sign this document –
 Could you also sign my new Will.
I did not know in advance we were going to sign both documents
I signed them. My signature on the EPA was not crossed out when I left.
I remember Abbie saying that she wanted the other children and grandchildren to have jewellery and other personal items

Frank’s evidence

24. Frank had very little recollection of the events of 24th July 2004. In paragraph 14 of his witness statement he had stated that Ray Grove (whom he referred to as “the lawyer”) had read out the contents of the Will to her. However, when he gave evidence he accepted that he might well have been mistaken about this. He said his main concern was making the tea and keeping his mother positive.

25. He agreed that when his mother was talking about the Will she said that Victoria was to have the jewellery although she said he was to have a Welsh gold ring.

Other evidence

26. Stephen, Victoria and Haley each gave evidence of conversations that they had had with Abbie when she had described her testamentary intentions to them. Stephen and Victoria said that they had been told that her estate was to be divided between the three surviving

children with a small provision for Anthony's children. [See paragraphs 8 of their second witness statements]. Haley [in paragraph 11] said that she was told that she would be looked after out of Stephen's portion of the estate. She referred in particular to a conversation in February 2007 (when Abbie was in hospital after a fall) when Abbie again told her she would be looked after under her will. It was clear from the cross-examination that Haley did not know the terms of the 1990 will. None of them were aware of the 2004 Will.

27. Trevor Cook ("Trevor") was in a relationship with Frank between 2001 and 2009. As a result he regularly (3 nights per week) stayed overnight at 42 Middleton Street and got to know Abbie well. As Frank could not drive he often took Abbie to hospital where she was due every 3 weeks.

28. Trevor deals with the 2004 Will in paragraphs 7 and 9 of his witness statement. In paragraph 7 he refers to a conversation when she told him that she had arranged for a solicitor to come to see her about a Will. In paragraph 9 he recalls a conversation between Frank and Abbie.

Frank was aware that the house was to be left to him. I assume that Abbie must have told him that she was leaving the house to him. I can recall hearing Frank say to Abbie that he thought that the others might not be happy with it and Abbie replying "leave them to me".

2.3 The relationship between Abbie and Frank

The 2006 diary

29. Abbie kept a diary until about a month before she died. Unfortunately the only diaries that have survived are the diaries for 2006 and 2007. Thus there is no surviving diary for July 2004 when the 2004 Will was executed. However the 2006 and 2007 diaries are relevant in that they shed light on the relationship between Abbie and her three children.

30. It is not in dispute that the diaries demonstrate a loving relationship between Abbie and Victoria and Stephen. The entries show for example that she was pleased to see Victoria (31/5/06), that she had a nice day with Victoria (4/6/06). It was lovely to see Victoria (19/8/2006). Similarly she got a nice surprise when Stephen and Haley visited (30/7/06). There are similar comments about Stephen following a visit on 29/9/06 when he arranged for her to have a new cooker.

31. Mr Holland however relied on the diaries as throwing considerable light on the relationship between Abbie and Frank. He submitted that the entries demonstrated a number of matters. Abbie was an enthusiastic completer of crosswords, "codewords" and other puzzles. She watched "Countdown" on TV which she said was to keep her mind active. She enjoyed painting, calligraphy and cross-stitching. The diaries record Frank carrying out errands for her – such as collecting magazines.

32. There is not a hint in the diaries of any problems with the relationship between Abbie and Frank. Mr Holland particularly relied on the entry for Frank's birthday – 14th April 2006 which reads:

I think Frank's had a good day; he seems to be happy with the sun glasses I got him, and he phoned me later on with his new mobile phone that Trevor got him, *he's given up his freedom to look after me and I am so very grateful and feel guilty ...* (my emphasis).

33. It is part of the Claimants' pleaded case that Frank was an alcoholic and tyrannical character who exerted a lot of influence over Abbie and was in a dominating position in her life. There is nothing in the diaries which would support this allegation.

34. There was in fact quite a lot of evidence about the amount Frank drank when out. Not all of the evidence was consistent and I do not find it necessary to make any express finding

as to the amount he drank. The evidence suggested that his alcohol intake when at home was modest. None of the witnesses (i.e. Stephen, Victoria or Haley) were able to point to a single incident where he had been tyrannical or domineering towards Abbie even when in drink. As already noted Stephen agreed that at least until 2007 it was Abbie who called the tune in the relationship. She gave the orders and Frank obeyed them.

Other evidence

35. A number of other witnesses were called to give evidence about the relationship between Abbie and Frank. James Thompson is a retired electrician who lived opposite 42 Middleton Street. He often saw Abbie and Frank out and about with Frank pushing his mother in her wheelchair. He described the relationship as peaceful. Frank seemed very attentive whilst helping Abbie. In cross examination he agreed that he had never been into their house.

36. Joseph Banks knew Abbie for about 7 years before she died. He saw Abbie about 7 times a year and from time to time took Abbie to hospital and on shopping trips. He describes Abbie as being “sharp as a tack”. She was in charge of her money and was prudent over what she spent money on in the supermarket. She had a good understanding of what she wanted in the supermarket. He described Frank as being exceedingly patient, alert to her medical needs. He described them as being quite happy in each other’s company and it was obvious to him that there was mutual love and black humour between them.

37. Trevor described the relationship between Frank and Abbie as good. He describes Frank as very caring towards Abbie. He saw a lot of fun banter between them and never heard either say a nasty word against the other. He would not describe the relationship as one where Frank dominated his mother. Abbie would say what she wanted and Frank would go and get it. In his opinion Abbie had all her mental faculties until about 2 weeks before she died. He described her as “bright as a button”.

2.4 The medical evidence

Abbie

38. Professor Hodkinson, a retired professor of geriatric medicine, was instructed as a single joint expert to give an opinion as to her capacity at the date of the 2004 Will and as to her likely vulnerability to undue influence. He did not examine Abbie but had access to her 2006 and 2007 diaries, her medical records and the pleadings.

39. Professor Hodkinson’s report is wholly favourable to Frank’s case. In summary:

1. There is no reference in the medical reports to Abbie being confused or lacking ability to make clinical decisions. There are specific references to treatment options being fully discussed with her. [See paragraph 8]. There is no evidence that Abbie had any mental illness or cognitive impairment in 2004 or later.
2. He describes the diaries as well written in good grammatical form with very few spelling mistakes. He refers to multiple entries of Abbie completing crosswords, and ordering goods by mail order. In his view they present a picture of a mentally active and engaged woman living as full a life as her illness permitted but who continued to take a great interest in family and friends. [See paragraph 9]
3. He accepts that there is the possibility of undue influence where one person has become dependent on a carer. However that is less likely where, as here, Abbie has retained full mental abilities. Furthermore he referred to entries in the medical notes which suggested that Abbie had a strong willed and determined personality. [See paragraph 11]. He did not

think that Abbie had increased vulnerability though he acknowledged that this was a matter to be determined on the evidence.

4. He had no doubt that, applying the Banks v Goodfellow test, Abbie had capacity to make the 2004 Will. She would have understood the nature of a Will. She was aware of the claims of Stephen and Victoria because they were to inherit if Frank did not survive her for 28 days. She would have had a good grasp of the extent of her estate. [See paragraph 13]
5. When he coupled his conclusions based on the diaries and the well preserved mental ability he reached the firm conclusion that Abbie knew and approved the contents of the 2004 Will. [See paragraph 14].
40. There is in addition a short report from Abbie's GP – Dr Watkins – who came to the same conclusion on mental capacity as Professor Hodgkinson. It is not necessary for me to refer to the report in any detail.

Frank

41. Frank's medical records have been disclosed. There is a helpful summary of them in a report dated 9th May 2011 from his GP, Dr Watkins. In July 1999 Frank attended his GP with symptoms of paranoia and other unusual psychological symptoms. Amongst the notes taken there are references to his being "vocally aggressive but not violent – irritable", to an alcohol intake of 10 pints three to four times a week, and to not being a hard drug user. Frank was seen by the Community Psychiatric Nurse Sharon Story on 30th July 1999. In her report she referred to Frank drinking 2 cans of lager at night. He goes out twice a week and drinks approximately 6 pints on these occasions. He also told her he was spending £15 a day on cannabis. She thought that the combination of the stress Frank was dealing with, the use of cannabis and sleep deprivation might account for his symptoms. She said she would see Frank again following his return from a camping holiday. In fact Frank discharged himself and declined any further consultation. Dr Watkins concluded that the presentation had been substance induced.

42. The next occasion that Frank presented with a mental health problem was in May 2007 following the death of his mother. In evidence Frank described the depression as severe reducing to moderate and said that it is now mild. According to Dr Watkins he required treatment with an SSRI antidepressant. He responded well after some adjustment of his medication in October 2007.

43. Dr Watkins made the point that Frank has never received treatment for alcohol abuse.

2.5 Events after Abbie's death

The funeral

44. There is a small dispute between the parties in respect of events following the funeral. Frank said that he left the 2004 Will out on the table for his brother and sister to read. He acknowledged that he was not in the best of form at the funeral having just seen his mother die. However he was sure that he had put the Will out. Both Stephen and Victoria deny seeing it. Victoria went so far as to say she was sure it was not there.

45. It is, however, common ground that Frank provided Victoria with most of the jewellery at the funeral. There are some small differences between Frank's account and that of Victoria. Victoria says that she asked Frank about the jewellery after the funeral. Without hesitation he went to Abbie's bedroom and brought out the box of jewellery. She was aware that it was not all of the jewellery but she was not concerned because she assumed she could collect the rest

later. She gave Stephen's daughter a choice of a few pieces and kept the rest. Frank's version of events was that he showed Victoria where the jewellery boxes were and she took what she wanted. He expected her to take it all. He said it was hers to take.

46. No-one suggests that the jewellery had any great monetary value. However it did have sentimental value especially to Victoria. There was a silver bracelet, a buckle, wedding rings and an amount of cheap and cheerful costume jewellery.

The claim against British Coal

47. On January 2007 there is a note in Abbie's diary that she had an appointment with a firm of solicitors in Amble over a claim against British Coal on behalf of her father. She had her fingers crossed that she would get some money. On 24th April 2007 (i.e. shortly after Abbie's death) another firm of solicitors – Beresfords in Doncaster – wrote to Frank about the possible claim.

48. In any event the claim was eventually settled by the payment of £6,404.16 in 2009.

The claim by Stephen and Victoria

49. Solicitors instructed by Stephen and Victoria first wrote to Frank expressing concerns about Abbie's will on 12th October 2009. That letter refers to a will made 12 months before Abbie's death leaving the whole estate to Frank. It is therefore a fair inference that the solicitors had not seen the 2004 Will at that stage.

50. According to Stephen the family had tried to contact Frank but he would not speak to them. He had come to stay the Christmas after Abbie died but thereafter had refused contact. Stephen said that they did not know the exact terms of the 2004 Will but had obtained some information when he phoned the solicitor in Amble who had dealt with the grant of Probate. He was making enquiries about the compensation that had been paid in respect of his grandfather's estate. Stephen said that they did not receive a copy of the 2004 Will until it was obtained by their solicitors prior to the issue of proceedings. This was confirmed by Victoria.

51. In any event Frank did not reply to the letter or to the subsequent letters written by the solicitors on 13th November 2009, 15th January 2010, 22nd July 2010 or 20th December 2010. Proceedings were eventually issued in March 2011. It is plain that by that date the solicitors had obtained a copy of the Will.

52. When he gave evidence Frank readily accepted that he did not reply to the letters. He did not recall receiving them. He explained that he was suffering from depression and many letters went unanswered during that period.

53. On receipt of the proceedings Frank instructed solicitors and no complaint is made about the conduct of the proceedings thereafter.

The estate.

54. Abbie's estate was modest. The principal asset was her home – 42 Middleton Street, Amble. She had a bank account which had £1,010 in it on 5th April 2012. It may be that some of this belonged to Frank in that his carer's allowance was paid into the account. Funeral expenses of about £500 appear to have been paid out of this account. In addition there was a life insurance policy which, according to the Defence paid £1,771.44 on 1st June 2007 and the moneys eventually paid in respect of her father's claim.

3 The Law

3.1 Knowledge and Approval

55. The law is well settled and was uncontroversial as between counsel. It was considered in detail by the Court of Appeal in Fuller v. Strum [2002] 1 WLR 1097, in particular per Chadwick LJ at paragraphs 65 to 72. It was also summarised by Briggs J in Re Key [2010] EWHC 408 at paragraph:117

- i) As with testamentary capacity, due execution of an apparently rational and fair will, will ordinarily satisfy the burden of proof on the propounder, unless there are circumstances which excite the suspicion of the court.
- ii) In such a case, the propounder may be required affirmatively to prove knowledge and approval. This is an evidential rather than legal burden.
- iii) The standard of proof is, as is in all civil proceedings, that of the balance of probabilities. Nonetheless the task of satisfying that standard will generally vary in proportion to the degree of suspicion engendered by the circumstances.

56. It is also possible for the Court to find that part of a will did have the knowledge and approval of the deceased and that another part did not. The matter was explained in paragraph 36 of the judgment of Peter Gibson LJ in Fuller v Strum:

36. I do not doubt that it is possible for a court to find that part of a will did have the knowledge and approval of the deceased and that another part did not. An example would be if a solicitor, who has been instructed to draft a will, obtains the deceased's approval of the draft but subsequently before execution adds a clause without drawing it to the attention of the testator and keeps the executed will. But the circumstances in which it will be proper to find such a curate's egg of a will are likely to be rare. In my judgment it would not be proper for the court to pronounce against part of a will as a means of expressing the court's disapproval of the propounder. Where a will has been duly executed by a deceased of testamentary capacity who knew that he was making a will and is shown to have known and approved of a specific part of the will, the court must consider how real is the possibility that the deceased did not know and approve of the remainder of the will and that requires a careful examination of all the circumstances including the directions and dispositions of the will.

4 Discussion, Findings and Conclusion.

57. In my view all of the witnesses who gave evidence were honest and doing their best to assist the Court. There was in fact comparatively little dispute of fact between the witnesses and I am quite satisfied that such dispute is attributable to differences in recollection rather than an attempt to mislead the Court.

58. Contrary to the closing submission of Mr Critchley I was favourably impressed with Frank who was honest enough to say that had no detailed recollection of what was said when Mr Grove visited and on the date the 2004 Will was signed. I accept that there were differences between his witness statement and his oral evidence. However when he gave evidence he did not try to embellish his case by false recollections. Much of his evidence was in fact corroborated by the evidence of other witnesses.

59. On the balance of probabilities I prefer Frank's account of the events following the funeral to that of Victoria. In particular I think that Frank did offer Victoria all of the jewellery rather than only part of it. Victoria took what she wanted. I also think it is more probable than not that the 2004 Will was available for Stephen and Victoria to read at the funeral. My principal reason for this is the long (over 2 year) delay before any attempt was made by either Stephen or Victoria to query the devolution of Abbie's estate. It is not without significance that the first letter from their solicitors contained information (albeit slightly

inaccurate information) about the terms of the 2004 Will. If Victoria had thought that she remained the sole executrix (as she was under the 1996 Will) I would have expected her to have shown some interest in Abbie's estate before 2009.

60. In the Particulars of Claim Stephen and Victoria suggest a number of circumstances that should "excite the suspicion of the Court" so as to require Frank to prove affirmatively that Abbie knew and approved the contents of the 2004 Will.

Instruction of JMA and not Keith Thompson.

61. I agree with Mr Holland that this is not a matter which is suspicious. Whilst it is true that Keith Thompson was instructed for the 1996 Will there is no evidence that Abbie had any particular loyalty to him. The 1990 Will had been drafted by solicitors in Huntingdon; there is no evidence of any other legal work carried out for Abbie by Keith Thompson. In 1996 she had only just moved to Amble and there is no evidence that she knew Keith Thompson before then. It is perhaps not without significance that in 2007 she chose the other firm in Amble to investigate the possible claim against British Coal.

62. There is no evidence that Frank knew about the instruction of JMA. JMA advertised nationally and, as Mr Holland pointed out, may well have offered a more competitive service.

Abbie's mental faculties and lack of advice.

63. There is clear evidence that Abbie retained her mental faculties until at least early 2007. This is confirmed by the reports of Professor Hodkinson, Dr Watkins, the contents of Abbie's diaries, Abbie's activities (such as puzzle solving, painting and calligraphy) and the evidence of the independent witnesses to the effect that she was "bright as a button" or "sharp as a tack"

64. There is no evidence of the advice given to her by Mr Grove though, as an employee of a will writing firm, he is likely to have given some advice. As I have noted she was given detailed written advice as to how to execute the Will and a Power of Attorney.

65. The terms of the 2004 Will are extremely straightforward. As Professor Hodkinson pointed out Abbie was aware of the claims of Stephen and Victoria because they were made beneficiaries if Frank did not survive 28 days.

66. Furthermore the evidence of the attesting witnesses and of Trevor Cook shows that Abbie was fully aware that she had left her main asset (the house) to Frank who had been caring for her for 8 years by that time.

67. In my view there is nothing in Abbie's mental state to arouse the suspicion of the Court.

Frank's alcoholic and tyrannical character

68. Although there is some evidence that Frank drank excessive alcohol on occasions there is no evidence that he was tyrannical or that he exercised any improper influence on Abbie. All of the evidence relating to the relationship between Abbie and Frank pointed in the same direction. Indeed Stephen accepted that it was Abbie gave the orders. In those circumstances it is somewhat surprising that these allegations have been persisted in by Stephen and Victoria.

69. As already noted I do not need to make any findings on the extent to which Frank actually drank when he went out for an evening. I am, however, satisfied that he did not drink to excess whilst at home and there is no evidence that he was overbearing to Abbie when drunk.

70. In my view there is nothing in Frank's character or of his conduct whilst drunk to arouse the suspicion of the Court. I find as a fact that he was not tyrannical to Abbie.

The Mistake in the Will / Failure to read the will over to Abbie.

71. It is true that the will wrongly records that Abbie's date of birth as 2nd October 1940 rather than 2nd October 1930. It is equally true that this mistake was not corrected when the 2004 Will was signed.

72. There are many reasons why such a mistake might have been made. It might have been a simple typing error which Abbie did not notice.

73. In the light of the documents sent by JMA and the evidence of the attesting witnesses I find as a fact that Mr Grove was not present when the will was signed. Thus I accept that Frank was mistaken in his witness statement when he suggested that Mr Grove might have been present. However as I have noted when he gave evidence Frank did not persist in this evidence and said that he now had little recollection of the event.

74. I also accept the evidence of the attesting witnesses that the will was not read over to Abbie before she signed. However the terms of the 2004 Will are not complex and in those circumstances I agree that the suspicion of the Court is not aroused.

Conclusion

75. In my view this is not a case where the suspicion of the Court is aroused. There is accordingly nothing to rebut the presumption arising from the due execution of the 2004 Will.

76. In any event I am satisfied on all of the evidence that Abbie knew the contents of the Will and approved them when she executed the Will.

The jewellery

77. There remains the conversation at the time of the execution about the jewellery. This was not something that featured in the pleadings or any of the witness statements. My note of the attesting witnesses' evidence records the conversation in slightly different terms:

1. She wanted her jewellery and personal items to be shared amongst her children and grandchildren. (according to David Garrett)
2. She wanted the other children and grandchildren to have jewellery and other personal items (according to Joanne Lundy).

78. A number of points can be made about these words. First they are vague. Abbie does not identify which of her children and grandchildren are to have which items of jewellery or personal items. Second they are different from the provisions in both the 1990 and 1996 Will in which the bulk of the jewellery was left to Victoria. Third they are different from what Frank says his mother told him later. She said that she wanted Victoria to have the jewellery. I have no difficulty in accepting this evidence. Fourth there may be an important distinction between the expression she used when referring to the house ("I am leaving the house to Frank because ...") and the expression she used about the jewellery ("I want my jewellery and personal items shared ..."). In the light of all these factors I agree with Mr Holland that the remarks about the jewellery are to be treated as precatory words – that is to say words that request or express a desire for action in a nonbinding way.

79. I am not therefore satisfied that this conversation affects the validity of the 2004 Will. I am in particular not satisfied that she believed that her intentions with regard to the jewellery

were included in the will. As I have said the Will was not a complex document. Its terms are easily explicable in that Frank had spent 8 years caring for Abbie at her home. In the circumstances it is not without significance that Frank complied with his mother's later request and gave the jewellery to Victoria.

80. In my view this is not one of those rare cases where the court would find a partial knowledge and approval. Apart from all other factors this is a case where the hypothetical clause about the jewellery has been omitted. It is difficult to see the doctrine of partial knowledge and approval can apply where the relevant clause has been omitted. If the omission of the clause in respect of the jewellery was as a result of a clerical error on the part of Mr Grove there might have been a case for rectification under section 20 of the Administration of Justice Act 1982. It would not have given grounds for refusing a grant of probate for the Will. It is extremely unlikely that a claim for rectification would have succeeded because Frank has complied with his mother's later expressed wishes over the jewellery.

81. I would dismiss the claim.