Judgments

Ramsey v Ramsay

[2015] Lexis Citation 196

Chancery Division

Mr N Lavender QC

4 September 2015

Will - Testator - Soundness of mind - Testatrix, IR, making will in 2006 - IR making second will in 2008 - 2008 will being less favourable to claimant, RR, than 2006 will - RR challenging validity of 2008 will - Whether, among other things, IR having testamentary capacity to make 2008 will - Whether IR having known and approved contents of 2008 will.

Judgment

Christopher Maynard (instructed by Cavendish Legal Group Ltd.) appeared on behalf of the Claimant.

Toby Bishop (instructed by Bolt Burdon Solicitors) appeared on behalf of the Defendant.

JUDGMENT: APPROVED BY THE COURT FOR HANDING DOWN (SUBJECT TO EDITORIAL CORRECTIONS)

MR N LAVENDER QC:

1. Mrs. Iona Adassa Ruth Ramsay was born on 27 December 1917 and died on 26 November 2010. The central issue in this case is whether she had testamentary capacity when she made a will on 1 September 2008 ("the 2008 Will") which, if valid, replaced an earlier will made on 14 August 2006 ("the 2006 Will").

2. Mrs. Ramsay was survived by seven of her children, namely:

(1) Hazelyn Ione McCubbin, born on 6 August 1938 ("Hazelyn").

(2) Muriel Glaze Cooke ("Muriel").

(3) Ericka Joyce Ramsay, the Defendant, born on 16 March 1945 ("Ericka").

(4) Dorreth Delvis Ramsay ("Dorreth").

(5) Roynel Rolvis Ramsey, the Claimant, born on 13 October 1951 ("Roynel").

(6) Nigel Bolton Ramsay, born on 20 September 1954 ("Nigel").

(7) Lova Gloves Ramsay-John, born on 17 January 1956 ("Lova").

3. Ericka is the sole executrix named in the 2008 Will and probate was granted to her on 13 July 2012. Roynel is (with Hazelyn) one of the two executors named in the 2006 Will and he commenced this action against Ericka on 21 October 2013, claiming revocation of the grant of probate of the 2008 Will and the grant instead of probate of the 2006 Will.

4. Mrs. Ramsay's estate consists primarily of her former home at 340 Billet Road, London. She also owned a house in Jamaica, at 37 Righton Crescent, St. Andrew ("the Jamaican Property"), which was the subject of a will dated 4 May 2010 ("the 2010 Will"). It is not necessary for me to determine the validity of the 2010 Will, but I heard evidence as to the circumstances in which it was executed.

The Terms of the Wills

5. The 2006 Will provided for Mrs. Ramsay's estate to be divided equally between her seven children. This was consistent with earlier wills made on 3 August 1989 and 18 February 2000. There was no suggestion by any party that Mrs. Ramsay lacked capacity when she made the 2006 Will, and I am satisfied that it was a valid will.

6. The 2008 Will provided for an uneven division of her estate, as follows:

(1) Hazelyn 8%

(2) Muriel 8%

(3) Ericka 50%

(4) Dorreth 12%

(5) Roynel 2%

(6) Nigel 16%

(7) Lova 4%

7. Clause 6 of the 2008 Will stated as follows:

> "I have made only limited provision for my son ROYNAL because he has bullied and harassed me and attempted to steal from me to the extent that the police have an Order that he is not to approach me again on pain of arrest and I have also made limited provision for my daughter LOVA because she has made provision for herself from my money in the past and I have made the largest provision for my daughter ERICA because she has devoted much of her time to caring for me over the last few years when my other children have shown much less interest in my welfare."

8. The 2010 Will provided for an even more unequal division of Mrs. Ramsay's Jamaican estate, as follows:

(1) Hazelyn 5%

(2) Muriel 5%

(3) Ericka 78%

(4) Dorreth 5%

(5) Roynel 1%

(6) Nigel 5%

(7) Lova 4%

Witnesses

9. Six of Mrs. Ramsay's children gave evidence at trial. Roynel and Ericka each gave evidence, and Roynel called Dorreth, Lova, Nigel and Hazelyn as witnesses, as well as relying on a statement by Muriel, who was not well enough to give evidence in person.

10. The witnesses called by Ericka were:

(1) David Offord, formerly of Cartwright Cunningham Haselgrove & Co., the solicitor who prepared the 2006 and 2008 Wills, as well as his assistant, Sarah Jayne Glynn, who was one of the witnesses to the execution of the 2008 Will.

(2) Mrs. Ramsay's friend, Hannah Thompson, who was present when Mrs. Ramsay gave her instructions to Mr. Offord.

(3) David William Bell, of Edell Jones & Lessers, the solicitor who prepared the 2010 Will.

11. Two expert witnesses had prepared reports and a joint statement: Professor Robert Howard MB BS MD MRCPsych (instructed on behalf of Roynel) and Dr. Andrew Barker MB ChB MSc MBA PRCPsych MD (instructed on behalf of Ericka). The expert witnesses were not called to give oral evidence. Roynel relied on Professor Howard's report, but Ericka's counsel, Mr Toby Bishop, said that she was not relying on Dr. Barker's report.

Assessment of the Witnesses

12. There are a number of reasons for treating the uncorroborated evidence of all of the factual witnesses (other than the solicitors) with some caution:

(1) They were all family (or in Mrs. Thompson's case, a close friend). There was a long (and fluctuating) history of bad relations between various of Mrs. Ramsay's children and between certain of her children and Mrs. Ramsay herself. There was much emotion about some of the issues.

(2) They had all taken sides in this dispute.

(3) They were trying to remember events from 7 years ago or more.

(4) They were none of them young. The children's ages ranged from 59 (Lova) to 76 (Hazelyn).

(5) Some of them had limited involvement in the relevant events.

(6) Some of them clearly had poor recollections or gave evidence in an unsatisfactory manner.

13. I set out briefly my assessment of the individual witnesses.

Roynel

14. Roynel produced a notebook in which he had kept an occasional diary of events concerning his mother after she suffered a stroke in May 2006, and especially in the period from June 2007 to March 2008. This provided a contemporary account, albeit from his perspective, of a number of significant incidents. It was more reliable than his evidence at trial, when he exhibited a tendency to deny things which he himself had recorded in his notebook (for instance, that he had had a heated exchange with his mother on 16 June 2007 or an argument with his mother on 11 July 2007). He produced a typed version of this notebook as an annex to his witness statement, but omitted certain parts which portrayed him in a bad light. This cast doubt on his willingness to give the Court a full and frank account of relevant events.

15. There was further reason to doubt the reliability of Roynel's unsupported evidence. As he himself acknowledged, his benefit payments had been stopped when it came to light that he had an investment which had not been disclosed. In a statement made in this action on 18 December 2012 he said, "I have no savings", but in fact he had an investment which was worth £108,230.38 as at 5 January 2011. He said that he had used some of this investment to pay his legal fees and that some of it was being held for his son Chad, who had received £7-8,000 from the Criminal Injuries Compensation Board. However, it appears that his statement that he had no savings was untrue.

Nigel

16. Although his share of Mrs. Ramsay's estate was larger under the 2008 Will than the 2006 Will, Nigel made a statement in support of Roynel's case. In his brief statement, Nigel said that Mrs. Ramsay was pleased when Roynel went to live with her in 2002 and be her carer. He said that he (where possible) and Hazelyn (and to a certain extent Dorreth) assisted Roynel, but that Dorreth, Lova and Ericka had been out of their mother's life for some time. However, Nigel lived in Sheffield and had a family and therefore his direct involvement in relevant events was limited.

Muriel

17. According to Muriel's statement, she initially assisted Roynel, Hazelyn and Dorreth in caring for their mother, but subsequently spent more time in Jamaica. As a result, she had little, if any, direct evidence to give about relevant events.

Dorreth

18. It appears from a number of documents that Dorreth did not have good relations with Roynel at the time of the relevant events, but she made a statement in support of his case. However, it became apparent from her cross-examination that Dorreth had little actual recollection of any of the specific matters which were put to her.

Lova

19. Lova made a statement in support of Roynel's case despite the fact that he had accused her of stealing their mother's money. It is apparent that the relationship between Roynel and Lova was not a good one in 2007-8. She described in her statement how Roynel became angry when (at Nigel's urging) she visited their mother's house in 2007 after a period when she had removed herself from the dynamics of the family. They did not speak to one another.

20. Lova acknowledged that she was only in the house for short periods, and therefore her evidence is of limited assistance. Also, as I shall explain, the evidence which she gave at trial as to her stewardship of her mother's money was not satisfactory.

Ericka

21. Ericka had little contact with her mother for some years before 2006. She had more contact after her mother had a stroke in 2006, and was principally responsible for caring for her mother after April 2008.

22. Her evidence in relation to her mother's stroke demonstrates, however, that her recollection is imperfect. She said in her statement that "on the day my mother suffered a stroke I came to the house and found her and took her to the GP." At trial she accepted that this was wrong, as Mrs. Ramsay was not taken to her GP.

23. Likewise, when asked about payments from her mother's account with Lloyd's TSB (which Ericka operated from late 2008), Ericka said "It's a long time ago and I don't remember." It was surprising, therefore, that she felt able to say that conversations with her noted by the police had not taken place and to contradict Mr. Bell's evidence that he had not known that Mrs. Ramsay was living in a care home. In addition, her evidence as to the large sums which she withdrew from her mother's account and the large sums which she paid into her own account was unsatisfactory.

24. All in all, I do not regard Ericka as a witness whose unsupported recollection I can place much reliance on.

Mrs. Thompson

25. Mrs. Thompson had known Mrs. Ramsay since about 1989/90. She visited Mrs. Ramsay at home every day, but she and Roynel did not speak. Her poor relations with Roynel meant that she was not an impartial witness, and her memory was imperfect. She could not remember, for example, that 4 years had passed between Roynel moving into the house and Mr. Ramsay's stroke.

Mr. Bell

26. Mr. Bell was an experienced solicitor who gave evidence in a straightforward manner, answering questions when he could and acknowledging when he couldn't remember particular details. I regard his evidence as reliable.

Mr. Offord

27. The same can be said for Mr. Offord, subject to two points:

> (1) Mr. Offord had a tendency at times to answer questions by reference to his normal practice rather than from his actual recollection. While this is understandable for someone who has prepared as many wills as Mr. Offord, I have taken care when assessing his evidence to distinguish actual recollection from statements of general practice. On the other hand, Mr. Offord did identify specific points which he did remember, and acknowledged where his memory did not enable him to answer a particular question.

(2) As I shall explain, on one important point Mr. Offord's evidence at trial qualified a more general statement which he had made in his witness statement.

28. I am sure that Mr. Offord was doing his best to assist the Court and to answer questions truthfully, but the passage of time and the number of wills which he had prepared placed some limits on what he could be expected to recall.

Miss Glynn

29. Miss Glynn had been employed by Cartwight Cunningham Haselgrove & Co. as a legal assistant since 2001. During that time she had often witnessed wills. I have no doubt that her evidence accurately reflected what she saw and how things appeared to her.

Background

30. I begin by setting out the broad chronology of some of the principal events from the last years of Mrs. Ramsay's life.

31. I accept Dorreth's description of Mrs. Ramsay as a very strong, forceful woman before her illness. Ericka accepted that, before her stroke, Mrs. Ramsay was well aware of her finances. However, Mrs. Ramsay developed a number of problems with her health, including diabetes, hypertension, poor eyesight and carpal tunnel syndrome, which limited the use which she could make of her hands.

32. In 2002, following his divorce, Roynel went to live with his mother in the house in Billet Road. He provided care for her and also looked after her money.

33. The Jamaican Property had been owned jointly by Mrs. Ramsay and her oldest son, Enton Augustus Holmes ("Enton"), but Enton died in 2001. Roynel (who was Enton's half-brother) said that he went out to Jamaica for the funeral and sorted out problems with tenants and arranged repairs to the Jamaican Property.

34. On 16 June 2002 Mrs. Ramsay executed a power of attorney in Roynel's favour and he used this to help to administer the Jamaican Property. Roynel's evidence was that his mother went to the solicitors' offices and instructed them without him. So it appears that she was capable at this time of giving instructions to solicitors without assistance.

35. Roynel had discussions with lawyers in 2004 about a proposal that Mrs. Ramsay transfer title to the Jamaican Property to him. A form of transfer was drafted, but not executed.

36. Mrs. Ramsay suffered a stroke on 8 May 2006 and was in Whipps Cross Hospital until 18 May 2006. The stroke affected her speech but, as I have said, no-one has suggested that she lacked testamentary capacity when she made the 2006 Will on 14 August 2006.

37. In March 2007 Mrs. Ramsay suffered from weakness in her right hand. She was referred to Dr. McElligott, a consultant geriatrician at Whipps Cross Hospital. Subsequently, on 24 May 2007 a Folstein mini-mental state test was administered. Mrs. Ramsay scored 12 out of 28 in the test.

38. With effect from 25 June 2007 Roynel, who had been unemployed for a period of time, had to attend a course, which meant that he would be out of the house from 8.30 am to 5 pm. Roynel said that there was a

change in the nature of his relationship with his mother which started at about this time. It is clear that, whatever the nature of the relationship had been before, it was not a good one from this point onwards.

39. There were many entries in Roynel's notebook which gave examples of the poor state of their relationship between June 2007 and March 2008. Thus, for example, there was an incident on 16 June 2007, shortly after Roynel told his mother about his course. The results of Mrs. Ramsay's incontinence often had to be cleaned up by Roynel, and on this occasion it led to what he described in his notebook as "heated exchanges" and his telling her that what she had done was disgusting.

40. A FACE Overview Assessment Form records a reassessment of Mrs. Ramsay's needs carried out by Tina Owusu-Sem of the London Borough of Waltham Forest ("the Council") on 2 July 2007. The form states, inter alia:

> (1) "Her daughter Lova contacted EDT to report that her brother Roynel had been verbally aggressive towards their elderly mother and wanted an intervention from social services."
>
> (2) "Lova reported that Roynel does not like it when his mother [has] accidents as he does not like cleaning the mess and get[s] annoyed when this happens."
>
> (3) "Interpersonal relationships"
>
> "Adult protection issues Possible problem or need."
>
> (4) "Recently it has been reported by Lova - daughter of Mrs. Ramsay that her brother Roynel is not treating his mother with respect i.e. when he cooks, places the food on a trolley and kick it to his mother from about 4/5 metres away. He shouts at his mother when she messed herself accidentally, making her nervous in home.
>
> Lova also reported that since his [sic] brother started working about a week ago there is not sufficient food in the house for her to cook for her mother when she visits.
>
> She also reported that her brother controls her mothers finances and her mother does not have an insight into how her money gets used. She added that her mother wants her brother Roy to leave the house due to his disrespect for her."
>
> (5) "Carer feels his sister Lova has been trying to tarnish his relationship with their mother"
>
> (6) "Risk of abuse or neglect No apparent risk"

41. The form also recorded the views of Nigel and Hazelyn (referred to as Lyn), whose opinion was that Roynel had been doing a lot for their mother for a long time without any support from Lova or Ericka (referred to as Joy) and that Lova was unreliable. Lova's evidence at trial was that she had not personally witnessed the incident with the trolley, or Roynel shouting at their mother, but that she had heard Roynel raise his voice in their mother's presence. She also said that Roynel became annoyed when their mother had accidents and that this made their mother feel humiliated and upset. Ericka said that she had seen Roynel scream at her mother when she had an accident. Mrs. Thompson said that Roynel would "beat her up" if Mrs Ramsay had an accident, but Mrs. Thompson said that she never saw this herself.

42. Roynel recorded another incident on 11 July 2007. After an earlier disagreement, he returned home at about 11 pm and saw that his mother had pushed over a heavy metal cabinet and was pushing it across the floor, saying to herself, as she did so, that she wanted Roynel out of the house. There was a large quantity of cash in one of the cabinet drawers (about £12-15,000 according to Roynel's note, although in evidence he said it could have been more) and he noted that "She alleged that I owed her money from 25 years ago".

43. Then on 15 July 2007 Roynel overheard his mother and Lova talking. He wrote, "I heard Mum telling Lova that I wanted to take all her money for myself." Mrs. Ramsay asked Lova to take the cash which had been in the cabinet, which she did.

44. On 8 August 2007 Mrs. Ramsay and Lova opened a joint savings account at Lloyds TSB bank and £7,878.65 was deposited in the account on the same day. On 16 August 2007 the money (£7,020.21) in Mrs. Ramsay and Roynel's joint account was transferred to this new account.

45. On 19 August 2007 Roynel noted what he described as a "major altercation" involving Mrs. Ramsay, Dorreth, Lova and Roynel.

46. On 6 October 2007 Roynel noted that he informed his mother that he was going to put a padlock on his door, at which she became angry. Later that day Mrs. Ramsay tried to remove the padlock which Roynel had installed. He wrote that "I walked down the stairs saying that she will get what she deserves." This was one of a number of incidents which Roynel reported to the police.

47. On 22 October 2007 a firm of solicitors, M-R Solicitors, wrote to Roynel, saying that he was no longer required to be Mrs. Ramsay's carer and purporting to give him notice to quit 340 Billet Road. Lova said that she had asked the solicitors to do this, at the request of Mrs. Ramsay. Indeed, she said that her mother desperately wanted Roynel out of the house and that she had been scolded a couple of times because she hadn't got on with this matter quickly enough.

48. At Roynel's request, a Mr. Gibbs of the Council's Housing Advice Unit wrote to M-R Solicitors. This letter contained a number of allegations made by Roynel about Lova, including the allegation that she had misappropriated well over £32,000 belonging to Mrs. Ramsay and Roynel. The letter concluded by stating that Roynel would continue to provide care to his mother and would not be vacating 340 Billet Road at any time in the foreseeable future.

49. On 2 and 3 December 2007 the carers who regularly came to look after Mrs. Ramsay noted her as saying that her son "often comes over and swears at her", that she did not want him to come around any more, that she feared she was vulnerable, that her son pestered her about the "will", that he wanted to control everything, that he wanted to kill her because of the will and that she wanted him out of the house. It was also stated that her family had said that Roynel was "very forceful and abusive" towards Mrs. Ramsay.

50. Roynel saw this note and responded by writing a 4-page letter dated 19 December 2007 to his mother, which he said that he read to her. He denied the allegations against him and claimed that Lova, Ericka and Dorreth were trying to acquire favour with their mother and take over her affairs for financial gain. He repeated the allegation that Lova had taken "bank books, a cheque and cash amounting to in excess of £32,000 from this address".

51. On 5 March 2008 Roynel noted another incident with his mother, as part of which he pushed the trolley which had her breakfast on it. A plate fell to the floor and broke.

52. On 12 March 2008 Roynel noted that, following another incident, "I was very angry." After an argument, he found his mother hiding a knife under a cushion.

53. On 14 March 2008 Roynel wrote again to the Council's Adult First Response Team:

(1) He accused Lova of stealing £8,000 from Mrs. Ramsay's post office account and taking in excess of £12,000 in cash from the house.

(2) He wrote that:

"My mother has asked me to recover her money from Love (sic) for her, but I cannot see how I can do this, because my mother was in full possession of her faculties when she gave possession of her belongings to Lova."

(3) He said that his mother was demanding that he leave her house and doing everything possible to force him to leave.

(4) He said that he wished to relinquish his role as his mother's carer and that he was willing to leave her house as soon as possible, but had nowhere else to live.

54. On 25 March 2008 Roynel noted that his mother tried to enter his bedroom after 1 am and, when asked about this, attacked him with a wooden curtain rail. They exchanged abuse. In the course of this incident, Roynel noted, "I asked her why she felt that she had to behave in this way. I also told her that she will get back the same behaviour from me."

55. On 27 March 2008 Roynel noted that his mother came into the first floor room which he used as an office, unplugged the phone and fax machine and alleged, inter alia, that he owed her money, that he was a thief, that he didn't want to pay rent or work and that he should get out of her house. Roynel wrote:

"When I reminded what Enton had said about her (i.e. that he wished ... fall off) she called me a liar and said "Poor Enton"."

56. At trial Roynel said that what Enton had said was that he wished she would fall over and die.

57. On 2 March 2008 Roynel noted that he found a knife under his mother's pillow.

58. On 7 April 2008 Roynel noted an incident in which his mother tried to slap him across his face, he blocked her blows, there were verbal exchanges and he took photographs of her.

59. Matters came to a head on 11 April 2008 when Roynel was accused of assaulting his mother. His version of events (as stated in his notebook, which is consistent with what he is recorded as saying to the police when arrested and in interview) was that she had entered his office at about 6.15 am and (not for the first time) starting pushing his papers onto the floor. He "tried to usher her out of the room" and she "started to hit out". In cross-examination, he indicated that he put his hands out and made contact with her. He could feel her weight as her equilibrium went and he put her back on balance. Then she leant back against the wall and slumped to the floor. He called Social Services, who came to the house and bathed her.

60. When he returned to the house later in the morning Ericka was there and the police had been called. He was arrested and detained for several hours. He was charged with assault occasioning actual bodily harm and granted bail on condition that he did not attend 340 Billet Road without consent from the police. On 22 April 2008 the bail was cancelled when the decision was taken that there was insufficient evidence to support a realistic prospect of a conviction. The police classified the matter as "no crime".

61. The police records also state, inter alia, as follows:

(1) "Contact made through victim's daughter" (Ericka denied this.)

(2) "saw her mum on the floor and called police" (Ericka denied this. She said that it was the social worker who found her mother and then called both the police and Ericka. Ericka also disputed other statements attributed to her in the police record.)

(3) "Injury Description: Shock/small cut to left shin"

(4) "Suspect was detained and stated, "My mum came into my room, she pulled out the plug for the Fax machine and became aggressive towards me. She had a knife previously which I've reported. I ushered her out of the room and she hit out, then went onto the floor."

(5) "Pc fox spoke to the victim who stated suspect had kicked her and the[n] pulled her around the room by her arms and legs causing injury."

(6) "The room w[h]ere the offence took place was a 1st floor front which is used as an office. There I found a fax machine on the floor as if a disturbance has taken place."

(7) "The victim was spoken to and she claimed that her son had gone into HER room and grabbed her and kicked her. She showed officers her shin, which showed a small graze and area of broken skin."

(8) "Social worker: Ting (sic) Owusu-Sem" (A telephone number was given.)

(9) "Social services are involved and the social worker expressed feelings that the mother has in the past antagonised the subject with the intention of provoking a response."

(10) "Authority requested for NFA on the basis that the officers description of the scene (fax machine on the floor), the comments made by the social worker and the previous report relating to the mothers previous behaviour raise doubts over the validity of the allegation and any realistic chance of a successful prosecution."

(11) "It is probable that this can be considered for a no-crime pending DAT review. The scene at the house as discovered by officers attending is consistent with the suspect's account. He was wearing open sandals which is not consistent with the victim's injury of broken to (sic) skin - it would be assumed that the suspect himself would have suffered some sort of bruising had he kicked her. The social worker has also confirmed that the victim often antagonises the suspect. There is reasonable evidence to believe that this is a false allegation and should be no-crimed."

(12) "Confirmed as No Crime."

62. After the incident on 11 April 2008, Roynel did not return to the house and he never saw his mother again. On 11 April 2008 Mrs. Ramsay went to stay at the Ashleigh Rest Home in Walthamstow.

63. A letter dated 25 April 2008 from Tina Owusu-Sem recorded that Mrs. Ramsay had said that she did not wish to return home for fear of Roynel returning to harm her. The letter went on to say that Dorreth had also said that Roynel could return to harm Mrs. Ramsay. At trial, Dorreth said that she didn't recall speaking to the social worker and that she never saw anything herself to give rise to that concern. However, when giving evidence about the incident on 11 April 2008, Ericka said that her mother did not want to stay in her home because Roynel might kill her.

64. Ms. Owusu-Sem stated that Mrs. Ramsay had subsequently changed her mind and "you have capacity to decide where you wish to reside". Ms. Owusu-Sem requested confirmation that Mrs. Ramsay felt it was

safe to return to her home and that she had a non-molestation order against Roynel. At some time thereafter Mrs. Ramsay returned to 340 Billet Road.

65. On 18 July 2008 Mr. Offord went to 340 Billet Road to take Mrs. Ramsay's instructions for the 2008 Will. Ericka was in the house, but only Mrs. Ramsay and her friend, Mrs. Thompson, were present when Mr. Offord took these instructions. I will deal with this meeting in more detail later.

66. On 21 July 2008 Mrs. Ramsay executed a power of attorney (witnessed by Melodie Rawel, of M-R Solicitors) in favour of Ericka.

67. On 23 July 2008 Mr. Offord wrote to Mrs. Ramsay, enclosing a draft will. Mrs. Ramsay signed the draft, which was returned to Mr. Offord. Mr. Offord's evidence, which I accept, was that it was not unusual for wills to be returned incorrectly executed. He wrote again on 12 August 2008 offering to make arrangements for the execution of the 2008 Will.

68. On 1 September 2008 Mr. Offord and two of his assistants went to 340 Billet Road for the execution of the 2008 Will, which Mr. Offord signed on her behalf. Miss Glynn's file note records that they were there for 20 minutes and states:

> "Witnessed will signing & DJO running through Will with Mrs. Ramsay.
>
> She confirmed she approved of Will & agreed for it to be signed on her behalf."

69. On 8 September 2008 Mr. Bell saw Mrs. Ramsay in connection with claims against Lova concerning: (a) a joint account at Lloyd's TSB; and (b) Mrs. Ramsay's Post Office account, from which Lova had made substantial withdrawals. Mr. Bell's file note of this meeting contains the following:

> "I gather that Mrs. Iona Ramsay lives on her own and for some time her son was taking care of her financial affairs. However, Mrs. Ramsay was apparently authorising her son to draw money that she never had the benefit of he was a bit of a no gooder and as a result that arrangement came to an end around about July/August 2007. At that point Lova Ramsay-John came onto the scene and she was the one that then took over matters and the story is and Mrs Ramsay seems quite lucid and okay that she has some nearly £15,000.00 in cash which she was persuaded by her daughter Lova to put into an account."

70. Mr. Bell's file note records that he saw Mrs. Ramsay for 18 minutes. He said that he believed that Ericka was also present, but that Mrs. Ramsay did most of the talking. He saw her at 91 Coventry Road, Ilford, which was the home of Ericka's partner, Mr. James. His file note records that this was arranged to save on his travelling costs. His file note also stated that Mrs. Ramsay lived at 340 Billet Road. He said that he was not made aware that she was in fact in a care home at this time.

71. On 24 January 2009 Mrs. Ramsay was admitted to Whipps Cross Hospital showing signs of confusion. She never returned to live in the house in Billet Road. Instead:

> (1) On 12 February 2009 Mrs. Ramsay was transferred to George Mason Lodge Intermediate Care Unit.
>
> (2) On 7 April 2009 Mrs. Ramsay was transferred to Ashcroft Rest Home.
>
> (3) On 3 August 2010 Mrs. Ramsay was transferred to Whipps Cross Hospital.
>
> (4) On 8 September 2010 Mrs. Ramsay was transferred to Ashcroft Rest Home.

(5) On 11 or 12 September 2010 Mrs. Ramsay was transferred to Whipps Cross Hospital.

(6) On 1 October 2010 Mrs. Ramsay was transferred to a post-hospital care facility at Highams Court, where she remained until her death on 26 November 2010.

72. On 20 May 2009 Mr. Bell commenced proceedings on behalf of Mrs. Ramsay against Lova, claiming the sum of £14,898.76 which had been paid into the Lloyds TSB account in August 2007.

73. On 20 October 2009 Mr. Bell went to Mr. James' home in Ilford. He met Mrs. Ramsay and took her instructions concerning the 2010 Will. His file note of this meeting states:

> "I met Mrs. Ramsay who is now 92 I believe, but who is clearly extremely competent mentally although, physically she is not able to get around too much."

74. Mr. Bell's file note recorded concerns as to what Roynel had done with the deeds to the Jamaican Property and as to the fact that the rent was being paid into an account in Roynel's name "and we assume that he is extracting the money from that account". It also stated that "an injunction was obtained to get [Roynel] thrown out because he was physically assaulting his mother". Mr. Bell said that Ericka may have been present when they discussed the Jamaican Property, but that he insisted that Mrs. Ramsay was alone when they discussed her will.

75. The 2010 Will was executed on 4 May 2010 at Mr. James' home.

76. Mr. Bell saw Mrs. Ramsay again on 13 July 2010 in connection with: (a) her claim against Lova; and (b) the Jamaican Property. His file note states:

> "She is perfectly capable of discussing matters."

77. Mr. Bell noted that Mrs. Ramsay told him that she wanted to transfer the Jamaican Property into the joint names of herself and Ericka. On 30 July 2010 a firm of Jamaican lawyers, Livingston, Alexander & Levy (who were instructed by Mr. Bell's firm) wrote to Roynel to ask that he account for the rent collected on the Jamaican Property. Roynel replied on 15 August 2010. Amongst other things, he repeated his allegation that Lova had misappropriated over £32,000 belonging to him and his mother. He did not, however, produce the requested account of the rent collected on the Jamaican Property.

78. On 24 September 2010 a solicitor from Mr. Bell's firm wrote to Whipps Cross Hospital to request an opinion on Mrs. Ramsay's capacity to effect lasting powers of attorney in favour of Ericka. On 12 October 2010 Dr Geraldine McElligott replied, stating that she was satisfied that Mrs. Ramsay had mental capacity to decide to dispose of her home and to appoint Ericka to manage her money and invest it.

79. As I have said, Mrs. Ramsay died on 26 November 2010.

Testamentary Capacity

80. A will is void if it is made either by a person who lacks testamentary capacity or by a person who did not know and understand the contents of the will.

81. The test for testamentary capacity is that laid down by Lord Cockburn CJ in *Banks v Goodfellow* (1869-70) L.R. 5 Q.B. 549, at 565 (with the insertions made by May LJ in *Sharp v Adam* [2006] EWCA 449 at [68]):

> "the possession of the intellectual and moral faculties common to our nature should be insisted on as an indispensable condition. It is essential to the exercise of such a power that a testator [a] shall understand the nature of the Act and its effects; [b] shall understand the extent of the property of which he is disposing; [c] shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, [d] that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties--that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made."

82. Two other passages from Lord Cockburn CJ's judgment were highlighted by HHJ Norris QC in *Cattermole v. Prisk* [2006] 1 FLR 693, at para. 10(f)-(h):

> "(f) On the evidence led before me, there are two less frequently cited passages from that judgment which bear on the issues I have to decide;
>
> (g) The first is at page 567. After restating the elements of capacity (an understanding of the nature of the business in hand, a recollection of the property to be disposed of, a recollection of the persons who are the objects of the testator's bounty, and an understanding of the manner on which it is to be distributed between them), the court went on to approve an observation in Den v Vancleve 5 NJL 589, (1819) 2 Southard 660, that these qualities do not have to be possessed in the highest degree, or even in as great a degree as the testator may formerly have done.
>
> '... for this would disable most men in the decline of life; the mind may have been in some degree debilitated, the memory may have become in some degree enfeebled; and yet there may be enough left clearly to discern and discreetly to judge, of all things, and all those circumstances, which enter into the nature of a rational, fair and just testament ...'
>
> These words point the probate judge to an assessment of the disposing mind on a particular occasion and warn against an excessive reliance upon comparison with some former state.
>
> (h) The second passage is at pages 568-569 of the judgment, where the court considered the element of memory, pointing out that 'a man in whom the faculty is totally extinguished can not be said to possess understanding to any degree whatever, or for any purpose'. There then follows this citation from Stevens v Vancleve (1822) 4 Washington 267:
>
> 'But this memory may be very imperfect; it may be greatly impaired by age or disease; he may not be able at all times to recollect the names, the persons or the families of those with whom he had been intimately acquainted; he may at times ask idle questions, and repeat those which before had been asked and answered, and yet his understanding may be sufficiently sound for many of the ordinary transactions of life ... the question is not so much what was the degree of memory possessed by the testator? As this; had he a sound disposing memory? Was he capable of recollecting the property he was about to bequeath; the manner of distributing it; and the objects of his bounty? To sum up the whole in the most simple and intelligible form, were his mind and memory sufficiently sound to enable him to know and to understand the business in which he was engaged at the time he executed his will?'
>
> These words warn the probate judge against treating deficiencies of memory as the equivalent of incapacity, whilst underlining the role that memory has to play in deliberately forming an intelligent purpose of disposing of the property in a particular way."

83. The time for determining testamentary capacity is either when the testator made the will or as set out by Moore-Bick L.J. in *Perrins v. Holland* [2011] Ch. 270, at para. 55:

> "One must then ask (i) whether at the time he gave the instructions he had the ability to understand and give proper consideration to the various matters which are called for, that is, whether he had testamentary capacity, (ii) whether the document gives effect to his instructions, (iii) whether those instructions continued to reflect his intentions and (iv) whether at the time he executed the will he knew what he was doing and thus had sufficient mental capacity to carry out the juristic act which that involves. If all those questions can be answered in the affirmative, one can be satisfied that the will accurately reflects the deceased's intentions formed at a time when he was capable of making fully informed decisions."

84. As to the burden of proof, the applicable rules were stated as follows by Briggs J. in *Re Key Deceased* [2010] 1 WLR 2020, at para. 97:

> "The burden of proof in relation to testamentary capacity is subject to the following rules: (i) While the burden starts with the propounder of a will to establish capacity, where the will is duly executed and appears rational on its face, then the court will presume capacity. (ii) In such a case the evidential burden then shifts to the objector to raise a real doubt about capacity. (iii) If a real doubt is raised, the evidential burden shifts back to the propounder to establish capacity nonetheless."

85. In the present case, it was common ground that the 2008 Will was duly executed and appears rational on its face. Having regard to all of the matters addressed in this judgment, I find that Roynel has raised a real doubt about capacity. Consequently, the evidential burden is on Ericka to establish that Mrs. Ramsay had testamentary capacity.

86. It was also common ground that the fact that Mr. Offord (and Mr. Bell) did not arrange for a medical practitioner to satisfy himself as to Mrs. Ramsay's medical capacity, while it may have been contrary to the "golden rule", and while it certainly made this dispute more difficult to resolve, does not in itself demonstrate that the 2008 Will was invalid: see *Scammell v. Farmer* [2008] EWHC 1100 (Ch), at paras. 117-123; and *Re Key Deceased* [2010] 1 WLR 2020, at paras. 6-8.

The Medical Evidence

87. Mrs. Ramsay's medical records were before the Court and had been considered by Professor Howard. It is an unusual feature of this case that, whereas Roynel relied on Professor Howard's report, Ericka did not rely on the report which she had obtained from Dr. Barker and her counsel, Mr. Bishop, did not cross-examine Professor Howard. Mr. Bishop made some criticisms of Professor Howard's report in his closing submissions, but these matters were not put to Professor Howard, whose evidence was unchallenged by any other expert evidence. In those circumstances, I accept Professor Howard's evidence as set out in his report insofar as it contains expert evidence on medical matters rather than his opinion (or his instructions, or his understanding) on questions of fact.

88. In the section of his report entitled "Summary of my opinion" (which I have divided into numbered sub-paragraphs for ease of reference), Professor Howard said as follows:

> (1) "Based upon the medical records that I have been able to review, my opinion would be that Mrs. Ramsay was suffering from a moderate to severe degree of vascular dementia by September 2008."

(2) "As a consequence, her orientation, memory and understanding would have been impaired at that and later time points, so that on the balance of probabilities she would not have been likely to have had capacity to make a valid Will."

(3) "However, the evidence of the two experienced and apparently conscientious solicitors who prepared her Wills, would support the presence of sufficient awareness and understanding for Mrs. Ramsay have likely had testamentary capacity."

(4) "If the Court decides the reasons that Mrs. Ramsay gave Mr. Offord and Mr. Bell were that she was changing the proportion of her estate that she wished to leave to her son Roynel and her daughter Lova were based in reality, then I would consider that she most likely had testamentary capacity."

(5) "If, however, the Court decides that these reasons were based on a misunderstanding or series of delusional beliefs that had arisen as a consequence of Mrs. Ramsay's vascular dementia, then I would consider that she was unlikely to have had adequate testamentary capacity to make a valid Will."

89. I accept Professor Howard's evidence that Mrs. Ramsay was suffering from a moderate to severe degree of vascular dementia when she made the 2008 Will. However, as Professor Howard recognised, that in itself does not determine the issue of testamentary capacity. The issue of whether a person had testamentary capacity when he or she made a will is not usually one which can be decided on expert evidence alone.

90. Indeed, Mr. Bishop pointed out that the Courts have repeatedly cautioned against over-reliance on the evidence of medical expert witnesses who did not have the advantage of examining the testator:

(1) In *Ewing v. Bennett* (1998) 25 February, unreported, Chadwick LJ said as follows of one expert witness:

"...He never met Annie, and his opinion was formed, purely and simply, on the basis of what others had said and written about her. That appears to me to be a thoroughly unsound basis from which to form a view as to an individual's mental capacity at any particular time."

(2) In *Blackman v. Man* [2007] EWHC 3162 (Ch) Sir Donald Rattee said as follows, at para. 114:

"In my judgment, the court must be wary of placing much reliance on the theoretical conclusions of medical witnesses, however eminent, who have not seen the testatrix but base their views on inferences from other evidence - inferences as to which ultimately it is for the court and not an expert witness to decide whether they should be drawn. ..."

(3) In *Simons v. Byford* [2014] EWCA Civ 280 Mummery LJ said as follows, at para. 60:

"My concern is that the courts should not too readily upset, on the grounds of lack of mental capacity, a will that has been drafted by an experienced independent lawyer. If, as here, an experienced lawyer has been instructed and has formed the opinion from a meeting or meetings that the testatrix understands what she is doing, the will so drafted and executed should only be set aside on the clearest evidence of lack of mental capacity. The court should be cautious about acting on the basis of evidence of lack of capacity given by a medical expert after the event, particularly when that expert has neither met nor medically examined the testatrix, and particularly in circumstances when that expert accepts that the testatrix understood that she was making a will and also understood the extent of her property."

(4) Where medical tests were carried out on the testator, due regard must be had to their purpose. Stephen Smith QC said as follows in *Scammell v. Farmer* [2008] EWHC 100 (Ch), at para. 94:

"In any event, the tests administered were directed at assessing a different capability than the capacity to make a Will. They were largely directed at memory and Irene's powers of recall. As was pointed out in *Banks v. Goodfellow*, the possession of an imperfect memory is not to be equated with an absence of testamentary capacity. The professionals never tested Irene Scammell's ability to recollect the names of her immediate family, in other words those she had a "moral responsibility" at least to consider as objects of her bounty; nor - as one would expect - did they examine her ability to comprehend the extent of her estate."

91. I bear this caution in mind. I note, however, that Professor Howard did not seek to set up his opinion in contradiction of the evidence of the two solicitors who prepared the 2008 and 2010 Wills. On the contrary, he acknowledged, in the passage quoted in sub-paragraph 88(3) above, that their evidence, to which I will shortly turn, supported the case that Mrs. Ramsay had testamentary capacity.

92. In terms of the four requirements for testamentary capacity set out by Lord Cockburn CJ in *Banks v Goodfellow*:

(1) Professor Howard said that "I consider she would have been able to understand the nature and effect of the act of making a Will." He accepted (and I find) that requirement (a) was satisfied. (I place no reliance on the fact that she signed the draft will which was sent to her. As Mr. Offord said, mistakes in the execution of wills are commonplace.)

(2) Professor Howard's position in relation to requirements (b) and (c) was as set out in sub-paragraphs 88(2) and (3) above, i.e.:

(a) Mrs. Ramsay's dementia made it more likely than not in his opinion that she would have lacked testamentary capacity.

(b) "However, it is possible that despite these difficulties Mrs. Ramsay was still able to demonstrate through the instructions that she gave and the justification for the testamentary dispositions that she wanted that she had adequate capacity to make a valid will." (Page 10 of Professor Howard's report.)

(c) The effect of the written evidence of the solicitors was that in fact she demonstrated sufficient understanding of the extent of the property of which she was disposing, and was sufficiently able to comprehend and appreciate the claims to which she ought to give effect, to satisfy requirements (b) and (c) (subject to what is said below about requirement (d)). Mr. Maynard acknowledged that, if I accepted the solicitors' evidence, then requirements (b) and (c) were satisfied.

(3) The major question, therefore, is whether requirement (d) was satisfied.

93. Professor Howard acknowledged (see sub-paragraphs 88(4) and (5) above) that it was for the Court to decide whether the reasons which Mrs. Ramsay gave for leaving a smaller share of her estate to Roynel and Lova were, to use his words, "based in reality".

94. On page 9 of his report, Professor Howard said that (emphasis added):

(1) "If the Court finds that Mrs. Ramsay's belief that her son had assaulted her was indeed untrue, then it is *possible* that this belief would constitute an abnormality of mind, or insane delu-

sion, that poisoned her affections for her son and impaired her ability to appreciate the claims of her children upon her testamentary bounty."

(2) "Depending upon what the Court decides about the validity of her beliefs that her son had assaulted her or stolen from her, Mrs Ramsay *may* have also had her affections poisoned by an insane delusion that would appear to have motivated her testamentary dispositions."

95. In the passage from his report quoted in paragraph 88(5) above, Professor Howard said that he would consider that Mrs. Ramsay was unlikely to have testamentary capacity if the Court found that those reasons were based on either: (a) a misunderstanding; or (b) a series of delusional beliefs. However, Mr. Maynard disavowed any reliance on Professor Howard's reference to a misunderstanding in this context. Mr. Maynard accepted that a mere misunderstanding on Mrs. Ramsay's part would not negative her testamentary capacity.

96. Professor Howard appeared also to express an opinion on the question whether, if the Court found that Mrs. Ramsay held any false beliefs about Roynel, those false beliefs were the product of: (a) a mistake or misunderstanding; or (b) an insane delusion. As to this:

(1) On page 9 his report, Professor Howard expressed the opinion that Mrs. Ramsay would have been "vulnerable to the development of false and unshakeable ideas about people." I accept this unchallenged medical evidence.

(2) On page 10 of his report Professor Howard went further and said as follows in relation to Mrs. Ramsay's beliefs about Roynel (emphasis added):

"If these beliefs are found to be untrue, then it would be my opinion that they *probably* constituted insane delusions that arose in Mrs. Ramsay as a consequence of the impairments of memory and understanding produced by her dementia."

(3) Professor Howard said much the same thing in paragraph 5 of the joint statement which he made with Dr. Barker (emphasis added):

"We agree that if Mrs. Ramsay's beliefs that her son Roynel had harmed her or had deprived her of property were false, *on the balance of probabilities* these represented insane delusions that had arisen as a consequence of the impairments of her memory and understanding produced by her dementia."

(4) In my judgment, these last two passages go beyond the proper scope of expert evidence, since the question whether any particular mistaken belief which Mrs. Ramsay may have held was the product of a mistake or an insane delusion is a mixed question of fact and opinion, which can only be determined by the Court, albeit with the assistance of Professor Howard's evidence. Professor Howard's opinion on factual issues is irrelevant, and to the extent that he expressed such opinions in his report, I disregard them.

Mr. Offord's Meetings with Mrs. Ramsay in 2008

97. As I have said, Mr. Offord took Mrs. Ramsay's instructions on 18 July 2008. He did so in the presence of Mrs. Thompson, and both of them gave evidence. He completed a "Will/IHT Advice Input Form".

98. Mr. Offord was a very experienced solicitor, who had prepared hundreds, if not thousands, of wills since being admitted to the roll in 1980, and who had experience of situations where testators appeared to lack testamentary capacity, although no formal training in recognising mental incapacity.

99. Mr. Offord was of the opinion that Mrs. Ramsay displayed the understanding necessary for testamentary capacity. Against the words "I am certain client had capacity" in the form, Mr. Offord wrote "Yes. But reassess when signing. Had a stroke."

100. When the 2008 Will was executed on 1 September 2008, Mrs. Ramsay again appeared to Mr. Offord to display the understanding necessary for testamentary capacity. Mr. Offord saw her with two assistants, Miss Glynn and Robert Barrand. As I have said, Miss Glynn's brief file note states:

> "Witnessed will signing & DJO running through Will with Mrs. Ramsay.
>
> She confirmed she approved of will and agreed for it to be signed by DJO on her behalf."

101. Mr. Offord's evidence to the effect that Mrs. Ramsay gave the impression on 18 July and 1 September 2008 that she had the understanding necessary for testamentary capacity is supported, inter alia, by the contemporary evidence of Mr. Bell's attendance notes, to which I have already referred:

> (1) Mr. Bell saw Mrs. Ramsay on 8 September 2008 (in connection with her claim against Lova) and noted that "Mrs. Ramsay seems quite lucid".
>
> (2) Mr. Bell saw Mrs. Ramsay on 20 October 2009 (to take instructions for the 2010 Will) and described her as "clearly extremely competent mentally".
>
> (3) Mr. Bell saw Mrs. Ramsay on 4 May 2010, when the 2010 Will was executed and they discussed the Jamaican Property. His note of this meeting records no concerns about her capacity.
>
> (4) Mr. Bell saw Mrs. Ramsay on 13 July 2010 (in connection with her claim against Lova and the Jamaican Property) and wrote, "She is perfectly capable of discussing matters."

102. Likewise, even as late as 12 October 2010, Dr. McElligott was able to write (albeit in terms which did not go so far as to express an opinion about testamentary capacity) that:

> "I am satisfied that she has mental capacity to decide to dispose of her home and to appoint her daughter to manage her money and invest it."

103. In relation to requirement (b) for testamentary capacity, there was really no suggestion at trial (other than Professor Howard's evidence, to which I have referred) that Mrs. Ramsay did not understand the extent of the property of which she was disposing. Mr. Offord said in paragraph 13 of his witness statement that it was his understanding (as was the case) that her estate consisted primarily of the value of 340 Billet Road, which he was told she owned in her sole name without any encumbrances. He also referred in his form to the Jamaican Property. It was not really in dispute, therefore, and I find, that she satisfied requirement (b) for testamentary capacity.

104. As for requirement (c), there was no suggestion at trial that anyone other than Mrs. Ramsay's children had "claims to which she ought to give effect", nor (apart from Professor Howard's evidence) was there any evidence that she was unable to recall the identity of her children, all of whom were named by Mr. Offord in his form. The central issues at trial were:

> (1) (in relation to testamentary capacity) whether her comprehension and appreciation of her children's claims was affected by any "insane delusion"; and
>
> (2) (in relation to her knowledge and approval of the 2008 Will) whether she was capable of understanding the percentage shares provided for in the 2008 Will.

The Meeting on 18 July 2008

105. When he took instructions from Mrs. Ramsay on 18 July 2008, Mr. Offord said that he was at a little pains to find out whether she understood what she wanted to do. He said that she was in fact very forthright indeed about what she wanted to do. Almost the first thing which she said was that she did not want Roynel to get anything. He said that Mr. Thompson tried to calm her down, saying "No, you can't do this. They're all your children." It was only at Mrs. Thompson's suggestion that Mrs. Ramsay decided to give Roynel a small share of her estate.

106. Mr. Offord said as follows in his statement:

> "Whilst I was of course concerned that a lady of advanced years in very poor health might represent a problem in capacity, I at no time had any doubt that Mrs. Ramsay knew her own mind on the two occasions that I saw her and that the Will represented her wishes."
>
> "Although physically unwell I have no reason to doubt that Mrs. Ramsay had full capacity to make her will, that she fully understood that she was making a Will, and was aware of her estate and approved the division of her estate contained in the Will.""

107. However, this was not entirely correct. When asked whether anything which Mrs. Ramsay said caused him to doubt whether she had testamentary capacity, Mr. Offord said he wondered initially about the violence of her denial that her son should get anything.

108. Mr. Offord said that his doubt was resolved when it came to putting down why she was only making limited provision for Roynel, which was when she told him that Roynel had bullied her, etc. Mr. Offord said that Mrs. Thompson said to him, "Yes, that's right" or words to that effect

109. However, I bear in mind that Mr. Offord was unaware that (as I have found) Mrs. Ramsay was suffering from moderate to severe dementia. Mr. Offord accepted in general terms that he might have acted differently if he had been aware of this.

110. Consequently, it was contended that Mr. Offord had no ground for taking the reasons which Mrs. Ramsay gave him for the dispositions in the 2008 Will at anything less than face value. It was contended, in effect, on behalf of Roynel, that Mr. Offord's initial doubts were justified and that Mrs. Ramsay's beliefs, least in relation to Roynel, were the product of insane delusions.

111. In relation to the division of Mrs. Ramsay's estate, Mr. Offord's evidence at trial was that, when he took Mrs. Ramsay's instructions on 18 July 2008, he was aware that many elderly testators are not familiar with decimalisation and percentages. He said that he wasn't entirely convinced that she would have understood percentages. He explained to her that they were going to divide the estate up as if it were a cake or a pie, and asked how much she wanted each of her children to get of that pie. She said that she wanted Ericka to get the most. He asked how much, and she said half.

112. He then said that, if Ericka was going to get half, they should take a smaller pie and he asked how she wanted to divide that. He asked questions such as "Do you want that child to get more than that child?" He said that this process took about 40 minutes. He also said that if he had been at all concerned that she didn't understand, he would have tried a different way of explaining. He said that he was concerned that she understood that some children would get more than others, and the relative proportions.

113. Mrs. Thompson's evidence at trial was that Mr. Offord explained the proposed division of the estate by saying, "If you have £100, and you divide it up, then ..." Mr. Maynard submitted that there was an inconsistency between Mr. Offord's evidence and Mrs. Thompson's evidence. However, Mr. Offord accepted that, in addition to referring to a cake or pie, he could have used different ways of explaining the matter, and that he could have said that 50 out of 100 goes to one child, and so on. I accept Mr. Offord's evidence, as set out above, as to what was said on 18 July 2008.

The Meeting on 1 September 2008

114. As for the meeting on 1 September 2008 when the 2008 Will was signed, I have already set out the terms of Miss Glynn's file note. At trial Miss Glynn confirmed that Mr. Offord read out the will, giving an explanation along the way as to the shares. Mr. Offord's evidence was that he read each part of the will and explained what it was about, going through each clause. In particular, in relation to the shares, Mr. Offord said that he went over these provisions at least a couple of times before he was satisfied.

115. Thus, Mr. Offord said that he asked Mrs. Ramsay whether she understood that half the estate was going to go to just one child, and she said yes. He also asked whether she understood that the other half was going to be divided between the other children, and she said yes.

116. Mr. Offord added that that was as much as he wanted to tax her with. Mr. Maynard submitted that this statement indicated that Mr. Offord did not do enough to ascertain that Mrs. Ramsay knew and understood the contents of the will. I do not agree. As an experienced solicitor, Mr. Offord was concerned to ascertain that Mrs. Ramsay understood the contents of the will and he made a judgment as to what questions it was appropriate to ask her to confirm that. Moreover:

(1) Although he sometimes gave evidence by reference to his general practice rather than his specific recollection, he said that his memory told him that on one occasion she said that she didn't understand and he went back over it again.

(2) When cross-examined, he said that he told her that some were getting half of what others were getting, and so on.

(3) Miss Glynn said that she recalled that Mrs. Ramsay was in agreement with the shares and that at that point Mrs. Ramsay mentioned that one of the beneficiaries was getting less because there had been an issue with theft in the past.

(4) Overall, Miss Glynn said that she saw no reason when she was there to doubt that Mrs. Ramsay was able to give her consent for Mr. Offord to sign on her behalf. Of course, Miss Glynn was not a solicitor and it was not suggested that she was trained in identifying capacity issues. However, her evidence supported that of Mr. Offord.

The Alleged Insane Delusions

117. I address the matters stated in clause 6 of the Will in reverse order. Mr. Offord said, and I accept, that these were not Mrs. Ramsay's own words, but that she used words which had the same meaning.

Ericka

118. In relation to Ericka, clause 6 of the 2008 Will states that:

> "I have made the largest provision for my daughter ERICA because she has devoted much of her time to caring for me over the last few years when my other children have shown much less interest in my welfare."

119. It seems that, at least after April 2008, Ericka was indeed the one who spent most time on caring for Mrs. Ramsay. In his closing submissions, Mr. Maynard did not contend that Mrs. Ramsay entertained a false belief about Ericka, and I find that she did not.

Lova

120. In relation to Lova, clause 6 of the 2008 Will states that

> "I have also made limited provision for my daughter LOVA because she has made provision for herself from my money in the past"

121. A week after the 2008 Will was made, on 8 September 2008, Mrs. Ramsay saw Mr. Bell in connection with potential claims against Lova concerning Lova's operation of the Post Office account into which Mrs. Ramsay's pension was paid and the account in their joint names at Lloyd's TSB. As to these:

> (1) The balance in the Post Office account fell from £4,348.60 on 16 September 2007 to £963.60 on 4 March 2008, notwithstanding weekly credits of £208.20 in respect of Mrs. Ramsay's pension. In cross-examination, Lova acknowledged that she built up about £5,000 in cash with what she called "the excess" from her mother's pension.
>
> (2) Mrs. Ramsay wanted to be able to operate the bank account herself. Despite repeated letters to Lova, this was not achieved until an order was made against Lova by a District Judge on 5 February 2010, after proceedings had been issued by Mrs. Ramsay against Lova and an application made to strike out Lova's Defence.
>
> (3) In her Defence Lova claimed that she had paid £5,000 into the Lloyd's TSB account and that this was part of the cash found in the filing cabinet. Lova must, therefore, have retained the balance of that cash.
>
> (4) Indeed, in a letter of 27 October 2008 Lova said that when she ceased to manage her mother's finances, she gave her mother two cheques for £5,000 each and that these "were partly the balance of the cash money found at her home and the pension moneys that were drawn from her pension account."
>
> (5) Even on her own account, therefore, Lova was holding £10,000 in cash of her mother's money. Lova acknowledged this at trial. Lova said that there was a dispute as to whether she gave these cheques to her mother. Lova did not allege, however, that these cheques were cashed or paid into an account by or on behalf of her mother.

122. In these circumstances, and in the absence of a clear account from Lova of how she had spent her mother's money, it is understandable that Mrs. Ramsay should have come to believe that Lova had kept some of it for herself.

123. Lova's evidence on these issues was unsatisfactory. For example, she was adamant that she only paid £5,000 into the joint account, when the account statement shows a credit of £7,878.65 on 8 August 2007, and she did not explain why she took £5,000 out of the Post Office account to hold in cash, when she was already holding thousands of pounds in cash. I find that Lova did retain at least £10,000 of Mrs. Ramsay's money, so that Mrs. Ramsay's belief as expressed in clause 6 of the 2008 Will was justified.

124. Again, Mr. Maynard did not contend in his closing submissions that Mrs. Ramsay entertained a false belief about Lova. Moreover, since Roynel himself had repeatedly accused Lova of stealing money from Mrs. Ramsay, it would have been difficult for Roynel to contend that that was a belief which could not be held by a rational person.

Roynel: Police Order

125. In relation to Roynel, clause 6 of the 2008 Will states, inter alia, as follows:

> "the police have an Order that he is not to approach me again on pain of arrest"

126. This was substantially correct, since between 11 and 22 April 2008 it was a condition of Roynel's police bail that he not attend 340 Billet Road. It is not surprising that a layman should describe this as an order, rather than a condition of bail. It may be that Mrs. Ramsay did not appreciate that bail, and with it the condition, had been cancelled, but that does not affect the substance of the point made in clause 6, which was that relations between her and Roynel had reached a point where the police had required him to keep away from her home.

Roynel: Attempting to Steal

127. Clause 6 of the 2008 also states as follows in relation to Roynel:

> "I have made only limited provision for my son ROYNAL because he has ... attempted to steal from me"

128. Mrs. Ramsay made other statements on the same subject in 2008 and 2009. In particular:

> (1) On 18 July 2008 Mr. Offord wrote on the Will/IHT Advice Input Form:
>
> "Property in Jamaica but son may have illicitly transferred to self."
>
> (2) On 8 September 2008 Mr. Bell wrote in his file note of his meeting with Mrs Ramsay that :
>
> "... Mrs. Ramsay was authorising her son to draw money that she never had the benefit of ...
>
> (3) On 20 October 2009 Mr. Bell wrote in his file note of his meeting with Mrs. Ramsay that:
>
> "The fact is that the property is let and the money which is being paid into The Victoria Mutual Building Society representing the rents is now being paid into an account which is in the name of Roynel Rolvis Ramsey whose address is shown as 340 Billet Road and we assume that he is extracting the money from that account."

129. Mrs. Ramsay was justified in being suspicious of Roynel's dealings with her finances. He handled large sums of her money and mixed her money with his, but never produced a written account of what he had received or what he had spent. Mr. Maynard submitted that this level of informality was understandable in the family context, and that may be right, but a person who deals with another's money in this way exposes himself to the risk that he will be thought to have retained more than his due, and that he will be unable to dispel that notion.

130. In relation to the Jamaican Property, Roynel received the rents for several years and neither paid anything to Mrs Ramsay nor provided her with an account of his receipts and expenditure on her behalf. It may well have been necessary for him to lay out money on matters such as repairs when he visited Jamaica, but at no stage did he quantify the amount of this expenditure.

131. Roynel said at trial that some of the cash which was in his possession in 2007 was money which he had brought back from Jamaica after his brother Enton died in 2001, although he also said that he had taken money out to Jamaica. Thereafter, the rent was paid into an account in his name and he never paid any part of it over to Mrs. Ramsay. In my judgment it is more likely than not that he did retain more than he was entitled to.

132. It is striking that when, in 2010, he was asked to account for the rent which he had received, he wrote a 4-page, single-spaced letter in response, but in that letter did not even begin to provide the requested account. In his witness statement he said that, as at January 2013, the balance standing to the credit of the account in which he had been receiving rents was J$779,521.74, which was the equivalent of over £5,000.

133. When giving evidence, he claimed that he could not account for the rent received because the statements were sent to 340 Billet Road. I do not accept this explanation. The account was in his name and he could have contacted the agents and asked for copies of the statements. His failure to do so suggests that he did not believe that a full examination of the accounts would assist his case.

134. Roynel also looked after Mrs. Ramsay's money in England. He received her pension, and I accept that he made payments on her behalf. But by his own admission there was a substantial surplus, which he kept in cash.

135. Moreover, Roynel did not keep his mother's cash separate. He mixed it with his own and did not keep an account. Even at trial, he could not say how much cash was in the filing cabinet, let alone how much of the cash in the filing cabinet was his and how much was his mother's. Roynel wrote in his notebook that the total amount was £12,000 to £15,000. He said at trial that it could have been more. But he called as a witness Lova, who said that she counted less than £10,000 in the top drawer of the filing cabinet.

136. In an annex to a statement dated 22 October 2014 Roynel estimated that about £5,000 of the cash was his, but at trial his best estimate was £1,500. No doubt it was convenient for him to maintain this level of uncertainty.

137. I bear in mind also that, as I have already mentioned, it has been shown that what Roynel says about money, both when claiming benefits and when making statements in these proceedings, can be inaccurate.

138. Taking all these matters into consideration, I find that Mrs. Ramsay did not entertain a false belief when she said in clause 6 of the 2008 Will that Roynel had "attempted to steal" from her.

139. I do not consider that it would be right to attach a technical, legal definition to the words "attempted to steal". Whether the words "attempted to steal" are the best words to use to describe the situation is not really the question (especially as they were to some extent Mr. Offord's words). The fact was that he had received her money, he was holding onto her money, he had given her no account of her money, and, if that state of affairs had continued, he would simply have retained the cash in the filing cabinet and the rent from the Jamaican Property. It was natural for a layman to describe this as attempting to steal Mrs. Ramsay's money, just as Roynel described Lova as stealing Mrs. Ramsay's money.

140. In any event, the belief that Roynel had attempting to steal Mrs. Ramsay's money was one which a rational person could hold. Roynel himself recorded Lova saying on 15 July 2007 that she would telephone social services to tell them that he had been storing up their mother's money with a view to taking it for himself.

Roynel: Bullying and Harassing

141. Finally, clause 6 of the 2008 Will states as follows in relation to Roynel,

> "I have made only limited provision for my son ROYNAL because he has bullied and harassed me ..."

142. It is plain that there was a breakdown in the relationship between Roynel and his mother. It is not necessary for me to decide how that came about. However, Roynel's own evidence provides a number of reasons why his mother might rationally have changed her attitude towards him:

> (1) Roynel said that the change in the nature of the relationship dated from the time in June 2007 when he told his mother that he would be out of the house for most of the day to attend a course. It would be understandable if she did not take this news well.
>
> (2) Roynel's reaction to her episode of incontinence on 16 June 2007 cannot have endeared him to her. It, or a similar incident, led to Lova making a report to the social worker, Ms. Owusu-Sem.
>
> (3) On this occasion, Roynel complained to Ms. Owusu-Sem that Lova had been trying to tarnish his relationship with his mother. He made similar allegations about Lova, Dorreth and Ericka. As they came to spend more time with their mother, one can see how this might have prompted a transfer in her affections.
>
> (4) On 11 July 2007 Roynel records that Mrs. Ramsay found the cash in the filing cabinet. This led to the allegation that he had attempted to steal from her, which I have already addressed.
>
> (5) On the same date, Roynel records that she said that she wanted him out of the house. She repeated this wish on a number of occasions, but he remained in the house until 11 April 2008.

143. The question for me is whether Mrs. Ramsay was motivated by a false belief about Roynel's conduct towards her and, if so, whether that false belief constituted an "insane delusion".

144. The evidence showed that some aspects of Roynel's treatment of this mother were open to criticism. Even by his own account:

> (1) He became angry with her when confronted with the results of her incontinence. He recorded "heated exchanges" on 16 July 2007 and telling her that what she had done was disgusting.
>
> (2) On 6 October 2007 he told her that she would get what she deserved.
>
> (3) On 5 March 2008 he pushed the trolley with her breakfast on it, causing a plate to fall to the floor and break. (I note that this is similar to what was reported to Mrs. Owusu-Sem and recorded by her on 2 July 2007.)
>
> (4) On 12 March 2008 Roynel noted that he was "very angry" and an argument started.

(5) On 27 March 2008 he told her that Enton had said that he wished that she would fall over and die.

(6) On 7 April 2008 Roynel took photographs of his mother in the context of "verbal exchanges" following an incident when she had tried to slap him.

145. Such incidents have to be seen in the context of:

(1) Roynel's caring for his mother for 5 years; and

(2) her conduct toward him, which could be provoking. The social worker's statement to the police that she had antagonised him with the intention of provoking a response supports similar accounts made by Roynel in his notebook.

146. However, I also bear in mind that this was the conduct of a man in his fifties towards a 90-year old woman in poor health and that she had been telling him that she wanted him to leave the house since at least 11 July 2007, but he had remained.

147. Consequently, although he may perhaps have been more sinned against than sinning (a matter which it is unnecessary for me to decide), I find that Roynel's conduct was at times such that Mrs. Ramsay could describe it as bullying or harassment. On that basis, I find that her belief that he had bullied and harassed her was not a false one.

148. It may be that the bullying and harassment referred to in clause 6 of the 2008 Will included a belief on Mrs. Ramsay's part that Roynel had assaulted her. Clearly, she told the police that he had assaulted her on 11 April 2008. I note, however, that, even by his own account, Roynel used physical force on his mother on 11 April 2008. He explained how, when he tried to usher her out of the room, he put his hands out and made contact with her. He said that he could feel her weight as her equilibrium went and he put her back on balance. He may have done this with the best of intentions, but he initiated physical contact and he used some physical force to move her.

149. It is entirely understandable that she should have perceived this as an assault, whether or not it was technically an assault in law. This is the only specific allegation of physical assault which Mrs. Ramsay is known to have made, and it had a foundation in fact.

150. If there were any other occasion when Mrs. Ramsay believed that she had been assaulted, then it is more likely than not that it had a similar foundation in fact. However, I doubt whether there was.

151. The incident on 11 April 2008 was the only recorded instance of Mrs. Ramsay alleging that Roynel had assaulted her. The complaint recorded by Ms. Owusu-Sem on 2 July 2007 was that he had been verbally aggressive, not that he had assaulted her. In December 2007 Mrs. Ramsay's carers noted a number of complaints made by Mrs. Ramsay about Roynel, but these did not include any allegation of assault. Mrs. Ramsay was visited by social workers and by a district nurse every day. If she had made any allegations of being assaulted by Roynel before 11 April 2008, I would have expected the social workers to have made a note of them and to have told the police when they spoke after the incident on 11 April 2008.

152. Against that background, I do not accept Mrs. Thompson's evidence that she noticed that Mrs. Ramsay was covered in lots of bruises, which Mrs. Ramsay attributed to being attacked and beaten by Roynel, or Ericka's evidence that her mother had a black eye on one occasion. If it were true that Mrs. Ramsay was bruised or had a black eye, then it is surprising that neither the district nurse nor the social workers ever no-

ticed it. It is more likely that Mrs. Thompson and Ericka's evidence in his respect was exaggerated or their recollection faulty.

Roynel: Wanting to Harm or Kill his Mother

153. In his written closing submissions Mr. Maynard submitted that Mrs. Ramsay was suffering from a false belief that Roynel intended to cause her significant harm. Roynel's pleaded case included the claim that she had made false allegations that he wished to kill her.

154. I have already noted above that in December 2007 Mrs. Ramsay told her carers that Roynel wanted to kill her "because of the will" and that, when giving evidence about the incident on 11 April 2008, Ericka said that her mother did not want to stay in her home because Roynel might kill her.

155. I have considered whether Mrs. Ramsay's disposition of her estate was affected by a (false) belief that Roynel wanted to kill her or to cause her serious harm. I have concluded that it was not. There was no suggestion that Mrs. Ramsay told Mr. Offord that she wanted to leave nothing, or little, to Roynel because he wanted to kill her or cause her serious harm. I am sure that Mr. Offord would have said so if she had. Instead, he said that, while the words used in the will were not hers, she used words with the same meaning. I note also Miss Glynn's evidence that when Mrs. Ramsay volunteered on 1 September 2008 the reason why she was leaving so little to one of her children, the only reason she mentioned was theft.

156. There was only one occasion on which Mrs. Ramsay said that Roynel wanted to kill her. He explained that he did not want to kill her in the letter which he wrote on 19 December 2007 and read to her, and, so far as I am aware, she never repeated that allegation.

157. In April 2008 she told Ericka that she was concerned that Roynel might kill her, but that was shortly after the incident which she had understandably perceived as Roynel assaulting her. Any use of physical force against a 90-year old woman in her condition was capable of causing serious harm. She gave fear of harm from Roynel as a reason for not returning home, but in fact she did return home shortly afterwards.

158. By 18 July 2008, it was clear from Mr. Offord's evidence that she had very strong feelings against Roynel. She was clearly capable of voicing the reasons for her antipathy towards him. If a belief that he wanted to kill her or cause her serious physical harm had formed part of those reasons, it is more likely than not that she would have said so. She did not.

Roynel: Summary

159. In summary, therefore, I find that Mrs. Ramsay's disposition of her estate was not affected by any false beliefs about Roynel. Moreover, the beliefs which she held about Roynel were entirely understandable and were beliefs which a rational person could easily have formed.

Knowledge and Understanding

160. As for the requirement that the testator knows and understands the contents of the will, the law on this issue was summarised as follows by Briggs J. in *Re Key Deceased* [2010] 1 WLR 2020, at paras. 116-7:

> "116. A conclusion that a testator lacks testamentary capacity necessarily compels a conclusion that he did not know and approve the contents of his will. My conclusion that Mr Key lacked the requisite decision-making capacity means that he did not, because he could not,

> approve his will, even though he may have manifested an apparent assent to it, after hearing it read over to him. Approval in this context requires decision, not mere assent. Nonetheless, the issue was fully explored and argued, necessarily on the hypothesis that, by a small or greater margin, Mr Key had the requisite capacity. I shall therefore address the issue on the necessarily hypothetical and therefore rather artificial basis that he did.
>
> 117 Again, the law in this respect is well settled and was uncontroversial as between counsel. It was recently 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. In summary:
>
> 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 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."

161. The approach to be taken by a judge was summarised as follows by Lewison LJ in *Simons v. Byford* [2014] EWCA Civ 280, at para. 47:

> "When we move on to knowledge and approval what we are looking for is actual knowledge and approval of the contents of the will. But it is important to bear in mind that it is knowledge and approval of the actual will that count: not knowledge and approval of other potential dispositions. Testamentary capacity includes the ability to make choices, whereas knowledge and approval requires no more than the ability to understand and approve choices that have already been made. That is why knowledge and approval can be found even in a case in which the testator lacks testamentary capacity at the date when the will is executed. The reason for this requirement is the need for evidence to rebut suspicious circumstances: *Perrins v Holland* [2010] EWCA Civ 840, [2011] Ch 270 at 25, [2011] 2 All ER 174. Normally proof of instructions and reading over the will will suffice: ibid at 25. The correct approach for the trial judge is clearly set out in *Gill v Woodall* [2010] EWCA Civ 1430, [2011] Ch 380. It is a holistic exercise based on the evaluation of all the evidence both factual and expert. The judge's starting point in our case was one of "initial suspicion", given that the disputed will was prepared and executed without a solicitor and without Mrs Simon having been medically examined: see 11. But having heard the evidence he held that his initial suspicion had been dispelled. He found it clear that Mrs Simon knew that she was making a will, took a conscious decision to make it and approved its terms."

162. I find that Mrs. Ramsay did know and approve the contents of the 2008 Will, which were read out and explained to her by Mr. Offord on 1 September 2008.

163. I have already referred to the evidence of Mr. Offord and Miss Glynn as to what happened when the Will was executed on 1 September 2008. It was submitted on behalf of Roynel that Mrs. Ramsay could not read or write and would not have understood some of the language used in the Will or the percentages used in the Will. As to this

> (1) Mrs. Ramsay's ability or inability to read is not significant, since the will was read over to her. It appears, however, that she had been able to read, although her failing eyesight may have made this difficult for her by September 2008. Roynel accepted that she could read his

name. Mrs. Thompson said that she read the Bible with Mrs. Ramsay. Lova confirmed this, and I accept their evidence.

(2) Likewise, Mrs. Ramsay's ability or inability to write is not significant, since she did not have to write anything in order to make the 2008 Will. She was physically unable to sign the will, as a result of the problems with her hands, but I was shown examples of her handwriting, which were identified as hers by Lova and Mrs. Thompson. She may well have been someone who did not write much, but she was able to write until physically prevented by the problems with her hands.

(3) As for Mrs. Ramsay's ability to understood some of the language used in the will, Mr. Offord's evidence was that this is normal and that his practice was to explain the will in language which the testator can understand. I accept that that is what he did in this case.

(4) As for Mrs. Ramsay's ability to understand the percentages used in the will, a number of witnesses said that Mrs. Ramsay would not have understood percentages. Nigel said that she knew halves, quarters, but not eighths. Hazelyn doubted whether she knew what quarters were. Lova said that she would not have gone past quarters and that she could not have understood percentages. However, as I have already noted, Mr. Offord's evidence was that he satisfied himself that Mrs. Ramsay understood the contents of the will and I have already rejected Mr. Maynard's submission that he did not do enough for this purpose.

Conclusion

164. For the reasons set out above, I find that Mrs. Ramsay had testamentary capacity both when she gave instructions for the 2008 Will and when it was executed and that she knew and understood its contents when she authorised Mr. Offord to execute the 2008 Will on her behalf.

165. Accordingly, Roynel's claim is dismissed.