

IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM NO. 671 of 2014

DOROTHEA PINEDA

CLAIMANT

AND

ESTHER CACERES

DEFENDANTS

ABNER CACERES

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Hearings

2015

14th May

21st May

12th June

Mrs. Ashanti Arthurs-Martin for the Claimant.

Mr. Estevan Perera for the Defendant.

Keywords: Wills – Validity – Authenticity – Due Execution – Wills Act Cap 203 (The Act)

JUDGMENT

1. A Will speaks when the author has been forever silenced and then, he may have but one voice to which the court is always anxious to give effect.

2. Albertico Nolberto Caceres died on the 22nd December, 2012 after battling stomach cancer for almost a year. Left to mourn (inter alia) were the Claimant with whom he had a relationship and the first and second Defendants, his wife and son respectively. About four months after his death the Defendants were granted Letters of Administration with the Will annexed of a handwritten Will (hereinafter The Will) dated 20th December, 2012. Under The Will, the two Defendants, along with one Anwar Caceres (also the testator's son), were the only beneficiaries of the deceased's entire estate.

3. The Claimant disputes the authenticity and validity of The Will. She claims that the deceased had already executed a Will on the 25th October, 2012 and in any case, on the 20th December, 2012 he could neither speak to instruct its preparation, nor could he use his arms to sign same. Hence, the signature on The Will was inconsistent with the deceased's known signature. Furthermore, one of the attesting witnesses never attended at the deceased premises on the day the Will was executed so the deceased could not have signed in the presence of the two attesting witnesses. The Defendants dispute every allegation.

4. She seeks the following reliefs:
 - “1. A Declaration that the purported Will dated 20th December 2012 was not executed by Albertico Nolberto Caceres.*
 - 2. A Declaration that the purported Will Dated 20th December 2012 was not executed by Albertico Caceres in the presence of two witnesses as required by the Wills Act.*
 - 3. An Order that the pretended Will dated 20th December 2012 be pronounced against.*
 - 4. An Order revoking the Grant of Administration With the Will Annexed of the Estate of Albertico Nolberto Caceres granted to the Defendants on the 15th day of April 2013.*

5. *An Order that the Court pronounce in solemn form the true last Will of Albertico Nolberto Caceres dated 25th October 2012.*
6. *Such further and other relief as the Court deems just.*
7. *Costs”*

The Issues:

5. There are only two real issues before this court:
 1. Whether The Will is authentic and
 2. If it is, then whether that Will was properly executed.

Whether the Will is Authentic:

6. The Claimant grounds her dispute against the authenticity of the Will on the deceased's inability to use his hands or speak at the time the Will was purportedly drafted and executed, as well as an expert report on the purported signature of the deceased on The Will.
7. She presented witnesses of fact neither of whom could attest to a total inability at the particular time. The testimony in support ranged from the testator having lost all use of his hands, including fingers and being able to mutter only one or two words on the 19th September, 2012 (testimony of Dorothea Pineda) to him, on the 20th September, 2012 being able to move his hands but not hold small things and speak but only being properly heard by putting one's ear to his mouth (testimony of his caregiver Santiago Chi).
8. The deceased's mother Juana Caceres explained that on the 20th September, 2012 he could speak a little and be heard and although he could move his hands, he could not hold anything. They all agreed that Albertico was very ill and unable to help himself with even the most basic self care requirements.

9. The defence evidence as to the deceased physical condition leading up to and during the preparation and signing of The Will was more disparate. Abner Caceres says that he held a half hour long conversation with the deceased who spoke clearly but not fluently - he paused for a second or two after every few words. He indicated his desire to make a will and Abner complied by getting Armando Valdez to attend. The deceased was then able to clearly tell Armando Valdez what he desired the contents of The Will to be. He signed The Will unaided, after being raised to a sitting position in the bed.
10. Armando Valdez, (the draftsman and witness) however, said that the deceased spoke clearly, fluidly and continuously – he termed it “a regular conversation.” He was able to consent to the making of the Will and to the contents. He could move his arms freely and signed unaided.
11. Amir Moh (the other witness) explained that when he arrived the deceased “was in good condition.” He could talk and listen and was conversing with everyone in the room.
12. Artemio Caceres (also present) testified that the deceased was able to give instructions for the preparation of The Will and he agreed those contents. When he spoke it was not fluent. He could only say three word phrases at a time. He says Abner had to lift the deceased into a sitting position to sign and although it took him a while he did sign unaided. He was the only witness who indicated any difficulty in the placing of the signature.

13. I considered the evidence and found that the deceased, on the date the Will was drafted and executed was not proven to be totally unable of channelling his intention for the making of a will nor was it proven that he was totally incapable of holding a pen to sign his name. He was acceptably very ill and may have had difficulties but he was not to my mind totally incapacitated.
14. Consideration must now move to the testimony of the handwriting expert Ms. Genoveva Marin. She holds a masters degree in forensic science and is the Managing Chief Analyst at the Belize National Forensic Science Service. She boasts an impressive wealth of experience and training and presented a comprehensive report.
15. Using a digital microscope Pro, Celeron, Ms. Marin examined twenty-two documents and The Will. The documents, dated between 2003 and 2012 and were provided by both parties, as well as the legal counsel at Social Security and The Belize Bank. These all bore the known signature of the deceased. She then compared those signatures to The Will in an attempt to ascertain whether the signature on The Will was genuine. She opined that it was not.
16. It is important to note that she did not find any deterioration in the writing as a result of a weak pen grip. When asked (in writing) to expand on this particular finding by counsel for the Defendants, the expert insisted that although illness and age could affect a person's signature, they would not manifest in the same sharp stops of hesitation as noted on The Will. Moreover, the variation in the signature occurred in sections only and not equally throughout as one would expect if it was caused by age or illness.

17. When one considers this evidence in light of the deceased's physical condition it raises serious doubt that he did indeed sign The Will. The court must therefore take all the circumstances into account in order to determine whether there was due execution of The Will.

Was The Will duly executed:

18. The law relating to the formalities for making a will are clear and must be strictly followed - *Brown v Skirrow [1902] p3*. Although no form of attestation is necessary its presence raises a presumption that a will, on its face, is duly executed. The Will has no attestation clause (formal or informal).
19. One's attention is immediately drawn to the possibility that the draftsman had no true knowledge of the proper preparation and execution of a will. The condition of the document does not offend against the requirements of The Act but it is unusual and again raises some doubt about the due execution of The Will. One witness's signature is above the testator's. Then there is a declaration clause which refers to the Oaths Act (unnecessarily so). Following which the date is inserted and the signature and seal of the Justice of the Peace appears.
20. This brings us now to the requirements of due execution under Section 7 of The Act:

"7(1) No Will shall be valid unless it is in writing, and executed in manner hereinafter mentioned, that is to say -

- (a) *it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and*
- (b) *such signature shall be made or acknowledged by the testatrix in the presence of two or more witnesses present at the same time; and*
- (c) *such witnesses shall attest and subscribe the Will in the presence of the testator.*

21. To be able to determine the due execution of The Will we must now enter the deceased's closed room on that fateful night. The only evidence to be seriously considered is that provided by the Defendants and their witnesses. I say this only because the evidence provided by the Claimant's witnesses did not prove that the persons who claimed to have been in that room were, in fact, not in that room. They both amplified their witness statements to include Abner Caceres' wife as an occupant. Neither said anything about Artemio Caceres.
22. This court simply could not conclusively find on the Claimant's evidence that Sergio Moh never went into that room that night.
23. Santiago Chi accepted that he (Santiago) was never present all evening, he went to have a bath and during that time did not know who went into that room. He explained that when he came out of the bath he was only told certain things about the occupants. He never saw Moh leave with the other occupants.
24. Juana Caceres wanted to be helpful but could not even say with any certainty who went in or came out of that room that evening. What she did say under cross-examination was that Sergio Moh never came to the house at that given time. The court took this to mean that he did not enter the room when Abner and his wife entered. She does not even refer to Mr. Valdez under cross-examination although she attests to his presence in her witness statement.
25. The evidence presented by the Defendant's witnesses also left much to be desired. It was contradictory and for the most part unbelievable.

The Defence Evidence:

26. All of the witness statements for the defence witnesses were consistent. They simply stated that after the Will was read over to the deceased by Mr. Valdez, the deceased signed in the presence of Mr. Valdez and Mr. Moh then the witness signed. The exact order of the signing by the witnesses after the testator is unimportant and could be disregarded if there seemed to be some discrepancy. But the evidence which is of importance to the court is that of the witnesses whose signatures are ascribed thereto and what exactly they witnessed.

27. Mr. Valdez the draftsman of, and witness to, The Will says he entered that room with Abner Caceres. Joyrelli Caceres and Artemio Caceres were already in the room and the deceased was lying on the bed. After he had drafted the Will he read it over to the deceased and enquired about the witness. Sergio Moh (the witness) came later. Mr. Valdez went on to say “the one who signed it was Sergio Moh, Amir Sergio Moh. He signed in my presence. May I say something. Then he signed it, that is when Moh came and witness the signing of the Will. Basically, Albertico who signed first The Will and then Amir Moh came and signed where I put witness then I signed it at the bottom.”

28. I considered Mr. Valdez’s demeanor and delivery of his testimony. He was sometimes hesitant when questioned and seemed more interested that things were done in his presence (perhaps a vestige of his role as a Justice of the Peace) rather than in the presence of both witnesses or the testator. I believed that when he said Moh came after the deceased signed he had not made an

error. He had inadvertently spoken the truth. Not even his re-examination could salvage this disastrous bit of evidence.

29. Amir Sergio Moh never testified under cross-examination that he saw the deceased sign or that the deceased acknowledged his signature in his presence. In fact, what he did reveal (contrary to his witness statement) was that when he arrived in that room he was simply asked to sign. He saw his name on a piece of paper and he signed there – “Everybody had already signed and all that was left was to sign.”
30. This witness spoke forthrightly and I was inclined to believe him. His was the most damning of the evidence presented. To my mind, had he witnessed the entire episode of the testator reading his Will and/or the Will being read to him and his consenting to the contents then the signing, that would not be easily forgotten or glossed over. I completely believed that he never witnessed the testator signing.
31. Abner Caceres added to the confusion. Under cross-examination he said he went to get Sergio Moh. And that Moh was already present when the deceased expressed his desires and when Mr. Valdez drafted The Will. He said the deceased read The Will and consented to its contents all in the presence of Mr. Moh and Mr. Valdez. Mr. Valdez then signed followed by Mr. Moh. When prompted by counsel he then said his father signed first, then he believe Mr. Moh, then Mr. Valdez. He was the only witness who stated that Albertico read The Will himself and who placed Moh in that room virtually from the beginning.

32. Finally, Artemio Caceres the deceased's brother said he was present originally as a witness. But after the Will was drafted, Mr. Valdez rejected him because of his relationship to the deceased. This particular piece of evidence was a confirmation that Mr. Valdez was not as knowledgeable in the preparation of a Will as perhaps he ought to have been when taking on the serious responsibility of its drafting. Although Mr. Valdez never referred to this conversation, his witness statement places Artemio in that room and later, Mr. Moh.
33. Artemio went on to say that he went to get Sergio Moh. When Mr. Moh arrived Mr. Valdez reread the Will and the deceased consented and signed. Mr. Valdez signed next and then Mr. Moh. It is striking that neither Mr. Valdez, nor anyone else for that matter ever said he read that Will twice.
34. The signing of a Will is the most tangible and important part of the entire exercise for a witness. Why is it that there are, so many versions as to how precisely it was done and the condition of the deceased during the process. Why should matters as mundane as who went to secure Mr. Moh's presence and when, be confused. This court firmly believes that Mr. Moh was not present if or when the deceased signed The Will. I find therefore that The Will was not executed in accordance with The Act.
35. I am driven to suspicion by the secrecy surrounding the making of The Will and that a beneficiary was involved in its preparation (Abner requesting his friend to do it). When I consider all the evidence in the round, the inconsistencies in the defence testimony; the evidence of the testator's illness and his waning strength; the fact that property which the testator owned jointly

with the Claimant was also part of the property devised; propounded by the expert's opinion, I cannot but find, on a balance of probability, that this Will was not signed by the deceased as it purports and is neither authentic nor valid. The Grant must be revoked.

36. The court is unable to pronounce on the other Will dated the 25th October, 2012 since no evidence was presented as to its due execution and attestation. Application for a Grant in solemn form must therefore be made in the usual way.

37. **IT IS HEREBY DECLARED THAT:**

1. The purported Will dated 20th December, 2012 was not executed by Albertico Nolberto Caceres.
2. The purported Will dated 20th December, 2012 was not executed in the presence of two witnesses as required by the Wills Act.
3. The purported Will dated 25th December, 2012 is invalid.

AND IT IS HEREBY ORDERED THAT:

4. The Grant of Administration with Will annexed of the Estate of Albertico Nolberto Caceres dated 15th April, 2013 be revoked with immediate effect.
5. Costs to be assessed if not agreed.

SONYA YOUNG
JUDGE OF THE SUPREME COURT