

IN THE HIGH COURT OF BELIZE A.D. 2023

CLAIM No. 420 of 2021

BETWEEN

K Aidan Allan Chatham

CLAIMANT

AND

Errol Allan Chatham

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MARTHA ALEXANDER

Trial Date: May 10, 2023

Submissions: May 15, 2023 and May 17, 2023

APPEARANCES:

Mr. Brandon S. Usher, Counsel for the Claimant

Mr. Ian Gray, Counsel for the Defendant

JUDGMENT

INTRODUCTION

1. In these proceedings, a son and a father found themselves embroiled in a hotly contested legal battle over the Last Will and Testament of the deceased, Carla Marie Bennett (“the deceased”). The claimant is the natural born son of the defendant and the deceased, and the appointed Executor of the Estate of the deceased. By her Last Will and Testament dated

November 13, 2019 (“the Will”), the deceased gave and/or bequeathed the entirety of her Estate to the claimant. In the Will, she detailed that she was devising her house and land at 2808 Gwen Lizarraga Street, Belize (“the Lizarraga residence”); an empty lot at George Price Highway and the residue of her real and personal Estate to her son. The defendant claims that he is the common law husband of the deceased so is entitled to a share in her Estate.

2. The deceased died on September 17, 2020 and after her demise, the defendant entered the Lizarraga residence, changed the locks on all doors, removed the belongings of the claimant and displaced his son from his home. The defendant has since then refused to allow the claimant back into the Lizarraga residence.
3. About a month after the death of the deceased, on October 15, 2020, the defendant lodged a caveat at the General Registry in the deceased’s Estate. The claimant learned of the caveat when he lodged a petition for Grant of Probate of the deceased’s Estate. A warning to the caveator was issued on February 22, 2021 and the defendant filed a notice of entry of appearance on March 09, 2021.
4. The defendant claims that he has enjoyed a common law status with the deceased for over 40 years, both in Belize and Chicago, USA and that he holds an equitable interest in the Lizarraga residence. He is contesting the authenticity of the signature on the deceased’s Will. In his defence, he seeks the relief that, “the claimant is NOT entitled: (i) to ask the court to determine the validity of the Will dated November 13, 2019 or (ii) to be the Executor of the deceased’s Estate.”
5. Given the polar opposite positions taken by the parties, it is not surprising that the trial was heavily contested. On the evidence at the trial, this court declares the Will is valid and that the signature on it is that of the deceased, as witnessed and proved by both attesting witnesses. It is declared also that the claimant is the lawfully appointed Executor of the Estate of the deceased, and he can apply for a Grant of Probate in her Estate. The court

orders that the Caution be lifted forthwith and that the claimant can proceed with probating the Will. The claimant is awarded his costs in the matter.

6. The reasons for my decision above are contained in the paragraphs that follow.

ISSUES

7. The only issue before the court is whether the Last Will and Testament of Carla Marie Bennett dated November 13, 2019 is a valid Will and, if so, should the Caution placed on the Estate be lifted.

EVIDENCE

(a) Claimant's evidence

8. The claimant is the only child of the deceased. He asserts that for a period, the deceased co-habited with and was the common law wife of the defendant, his father. However, at the time of her demise, both the deceased and the claimant lived at the Lizarraga residence and the defendant was not part of their household. The claimant called four witnesses in support of his case. The witnesses, including himself, are the two subscribing witnesses to the deceased's Will and a neighbour of the defendant.
9. The claimant spent the night that the deceased died at his aunt's home. When he returned to the Lizarraga residence the next day, the locks were changed and he was displaced from his home by the defendant. He had no access to his belongings or those of the deceased's, including the clothes he would have liked to bury her in. Sometime in October 2020, he learned that the deceased had left some of her belongings with a friend, where she stayed occasionally, and among her personal effects he found the deceased's Will.
10. The two attesting witnesses confirmed that they were present at the time when the deceased signed her Will in their presence and they confirmed that it was the signature of

the deceased on the Will. Ms. Rosalba Juliana Vasquez stated that she was a registering officer at the Elections and Boundaries Department and was working at the City Registration Office on the date that the deceased asked her to witness the Will. The deceased presented her with a Will that was already drafted and awaiting execution. She agreed, as she had known the deceased since August 12, 1991 and they were close co-workers. Ms. Vasquez stated that she was present with the other subscribing witness, Ms. Isabel Gentle, when the deceased signed her Will in their presence and they signed after her, as witnesses of the deceased's signature. Ms. Gentle stated that she was an assistant registering officer and she had known the deceased since July 13, 2007. She shared a close friendship with the deceased and they communicated daily. She was present as one of the witnesses when the deceased signed her Will.

11. As witnesses for the claimant, Ms. Vasquez and Ms. Gentle were plainspoken and unshaken during cross-examination. They described how the deceased came to their workplace and asked them to be witnesses to her Will, giving full details of date, time and place of the execution of the Will in their presence. These witnesses were credible and convincing. Their evidence supported the claimant's case that the Will was validly executed by the deceased in the presence of two subscribing witnesses. The defendant provided no evidence to contradict or weaken the evidence of these two witnesses.

12. Ms. Brianna Simone Higgs testified that she was a neighbour of the defendant since 2015, when she moved to No. 320 Los Lagos Community. She stated that since 2015 she knew the defendant to be living in a common law relationship at No. 321 Los Lagos Community with Ms. Andrea Andrews. They lived at that address with their two children. She too gave credible evidence and was unshaken in cross-examination, remaining adamant throughout that the defendant was her neighbour together with his common law wife and children.

(b) Defendant's evidence

13. The defendant states that he is a self-employed businessman wearing multiple caps, including involvement in the entertainment industry, the construction industry and in

interior and exterior decorating. He claims that he was the common law spouse of the deceased for approximately 45 years. Their relationship commenced during the 1970's and, purportedly never ended.

14. Despite the clear issue being the validity of the Will, the defendant gave evidence targeted to show his equitable interest in the properties forming the Estate and to highlight other side issues not before the court. On the primary issue of the Will's validity, he asserts only that it is not the deceased's signature on the Will. He then produces a handwritten Will of the deceased dated 2014 without any context. He gave evidence, further, that in 1980, he had migrated to the USA, and *"for over 22 years K Aidan lived (sic) with me and my family in Chicago, USA"* ("the Chicago family"). The Chicago family was made up of Ms. Delane Willis Ysaguirre and their two children. The defendant asserts that the claimant's *"stepmom"* (Ms. Ysaguirre) and the defendant paid for the claimant's higher education whilst he lived with the defendant's Chicago family. During cross-examination, the defendant stated that he only lived with Ms. Ysaguirre *"About two years we live together"* and had two children with her. Unaware of the conflict in his evidence, the defendant continued to insist that as regards the deceased, *"We relationship never did ended (sic). Never did, so noh know (sic) what he talking about. He know (sic) that too."*

15. The defendant's evidence consisted of his contribution to the purchase and repairs of the Lizarraga residence, which was bought initially *"as a fixer-upper"*. He stated that the deceased and he rented the Lizarraga residence for about 3 to 4 years, for BZ\$500 per month, while they lived at his brother's home. The deceased and he moved into the Lizarraga residence in 2011. His evidence focused on showing that he was in a long standing common law relationship with the deceased, whilst he lived in Chicago and in Belize. He claimed to have supported both the deceased and his son in Belize. He stated it thus, *"I still sent support and bought clothes, shoes, and other items for her and my son, Kaidan."* This long standing common law relationship survived despite having an alternate Chicago family and, later, a Belize family with Ms. Andrea Andrews and his two children.

16. During cross-examination, the defendant confirmed that he was the father of the two minor children, born on August 05, 2013 and January 14, 2016 (i.e. 9 years and 7 years). Under grilling during cross-examination, he stated that he would not deny his children but denied being in a common law relationship with their mother, Ms. Andrea Andrews. When shown the birth certificates that described the marital status of the children's mother as "common law" and which stated that he lived with her at 21 Oleander Street, he accused the claimant of tampering with the official documents. He insisted that he was never in any common law relationship with Ms. Andrea Andrews or any other woman but the deceased.
17. I find the defendant to be a stranger to the truth. The documents produced fell far short of supporting any statement made by the defendant in these proceedings. He exhibited the Transfer of Lease document, which showed that the property was transferred in the name of the deceased only. In my view, having a title document without your name on it does not prove ownership. Anyone can conduct a search and obtain title documents; it does not stand as evidence of the defendant's ownership unless it expressly says so. He also called no witnesses to corroborate his statements and he provided no rental receipts or vouchers for sums allegedly spent on remodeling "*the fixer-upper.*" He exhibited joint account cards with the deceased at Scotiabank and copies of a loan facility at the same bank without much context. During cross-examination, he was adamant that the joint account was sufficient evidence, "*If we have a joint account I think that's enough and it's right there.*" As regards the lack of receipts, he stated that the deceased "*did all the paper work. She has it.*" He referred to a loan from the deceased's sister for about BZ\$3,000-\$4,000 for repairs, but did not call her evidence nor did he produce evidence of alleged use of the deceased's property as a collateral for a BZ\$68,074.29 loan.
18. In my view, having investments with the deceased and a joint account do not invalidate a Will. These do not form part of the formalities for having a Will pronounced as valid.

LAW

19. The validity of the deceased's Will was the sole issue before the court and, if so found, whether the Caution placed on the Estate should be lifted. There are certain formalities for the creation of a Will that must be observed to make it valid.

20. **Section 7(1) of the Wills Act Chapter 203 Revised Edition 2020** states:

[1] No will shall be valid unless it is in writing, and executed in the 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;***

*(b) such **signature shall be made or acknowledged by the testator 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.***

[2] No form of attestation shall be necessary. [Emphasis added]

21. The requirements as to signature are set out in section 8 (1) which provides that:

[1] Every such will, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid, if the signature is so placed at, or after, or following, or under, or beside, or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will.

ANALYSIS

22. The witnesses who appended their signatures to the deceased's Will both confirmed their presence when the deceased signed the Will and that it was her signature. Their evidence was uncontroverted and the defendant has called no evidence in rebuttal. He did not even call for the appointment of a handwriting expert.
23. At the trial, the defendant maintained his defence of fraud by signature on the Will and held firmly to the position of an entitlement to share the Estate with the claimant. He makes no specific pleading and has not brought any counterclaim against the claimant to that effect. During cross-examination, the defendant insisted that the signature was not the deceased's and that, by virtue of the amount of time he had co-habited with the deceased and his alleged investments, he held an interest in her Estate. He wanted the deceased's Estate to be divided between the claimant and himself, since the claimant was not entitled to the entirety of the Estate.
24. The division of property was not an issue formulated by the parties to be determined at this trial. The Joint Pre-Trial Memorandum speaks only to the issue of the validity of the Will and lifting of the Caution should it be found valid. The division of property was neither part of the defence nor was there a counterclaim so it was not properly placed before this court. Issues are formulated from the pleadings and cannot arbitrarily be placed before a court. It remains proper practice that pleadings are used to define the parameters of a claim and so warn the other side of the case he has to meet: see *Perestrello v United Paint Co. Ltd.*¹
25. This position was restated recently by the Privy Council in *Charmaine Bernard (Legal Representative of the Estate of Raegan Nicky Bernard) v Ramesh Seebalack*.² In reaffirming the principles on pleadings, the Board quoted liberally from the words of Lord Woolf MR in *McPhilemy v Times Newspapers Ltd*³ to wit that, "Pleadings are still required to mark out

¹ [1969] 3 All ER

² [2010] UKPC 15 paragraph 15

³ [1999] 3 All ER 775 at p 792J

the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.” [Emphasis added]

26. In his submissions, counsel for the defendant relies on **section 5(1) of the Trusts Act** that recognizes that a trust, “*may be created by oral declaration, or by an instrument in writing (including a will or codicil), by conduct, by operation of law, or in any other manner.*” Counsel submitted that an equitable trust arose in the defendant’s favour over the disputed Lizarraga residence and asked the court to apply equitable principles under **sections 32 and 38 of the Supreme Court of Judicature Act**. He also argues that there was a Human Rights element giving rights to reliefs under the Constitution of Belize. He relied on the local case of ***Jasmin Samuels v Winston Bucknor***⁴ to argue that the defendant’s interests, rights and equity in the Lizarraga residence are not extinguished by the fact that he has lived in several common law relationships. These arguments, however, do not relate to any remedies pleaded in his defence and there was no counterclaim. Moreover, this is not a claim in public law that allows for the defendant to invoke constitutional rights. I refused, therefore, to make any ruling as to an equitable interest or trust, implied or resulting, in the Lizarraga residence.

27. Further, all the paper evidence before me, including his address at Los Lagos, which he gave to the police at the death scene, showed that he was not a credible witness. I found that the defendant was prone to embellishments, and predisposed to making vague statements. He even attempted to discredit government records (i.e. his children’s birth certificates) by claiming that the claimant had the power to tamper with these to get them to reflect the position needed to prove the claimant’s case. The defendant even provided a handwritten Will to “justify” his alleged distribution of gifts devised to the people identified therein.

⁴ Claim No. 24 of 2010

28. The law is clear that a testatrix can revoke a previous Will at any time and in many ways, including by creating another Will and signing such. **Section 18(b) of the Wills Act of Belize** reads:

18. No will or codicil or any part thereof, shall be revoked otherwise than,

(a)

(b) by another will or codicil executed in accordance with section 7 of this Act.

29. This contentious probate claim related to the validity of the Will and the removal of the Caution. There was no pleading or counterclaim by the defendant for the division of the deceased's Estate. There was very thin evidence, if any, to support an equitable entitlement to a share of the Estate. In my view, the validity or invalidity of the Will is not determined by whether the defendant has any equitable interests or rights in the deceased's Estate. The evidence of the defendant fell far short of proving any case against the authenticity of the deceased's signature or the Will's validity. The evidence pointed only to a largely unsubstantiated claim. His case in this regard has failed. Litigants and their counsel must self-caution when they have an evidentiary weak case or one not founded on proper pleadings. The overriding objective of the rules sets out the best practice for use of the court's resources and time in order to secure the just and expeditious disposal of matters. I say no more on this issue, save simply that, it was not the case before this court and appealing to the court's overriding objective will rarely cure such a defect.

30. The contentious probate matter before me rests solely on whether the deceased's Will is valid. I find, on the evidence, that the Will of the deceased made on November 13, 2019 is authentic and valid. The Will produced by the claimant is in writing; it is signed by the testator at the foot of the Will; there are two attesting witnesses and their signatures are subscribed to the document. The evidence of the two subscribing witnesses was believable, and there was no evidence called in support of fraud. The subscribing witnesses explained that they were both present, at the same time and same place with the deceased, when she signed

her Will. They witnessed her signing her Will and they both signed after her. This evidence was in no way impugned by any evidence of the defendant.

31. I am satisfied, on the evidence, that the requirements and/or formalities for making a valid Will are met and that the claimant has discharged the burden of proving the legitimacy of the Will through the evidence of the attesting witnesses and the attachment of the Will.

32. Having found the Will has been proven compliant with the statutory formalities and so valid, the court makes the following declarations and orders.

DISPOSITION

33. The court doth hereby DECLARE as follows:

- i. The Last Will and Testament of the deceased, Carla Marie Bennett, dated November 13, 2019 is valid and the signature appended thereon is that of the deceased.
- ii. The claimant is the lawfully appointed Executor of the Estate of Carla Marie Bennett and is entitled to apply for a Grant of Probate of the Estate.

34. It is ORDERED that:

- i. The Caveat lodged by the defendant is to be removed forthwith and the claimant is allowed to proceed with probating the Will.
- ii. Costs to be paid by the defendant to the claimant to be taxed by the Registrar, if not agreed.

Dated June 05, 2023

Justice Martha Alexander
Judge of the High Court of Belize