

All England Reporter/2014/November/Re Estate of Elizabeth Jane Walker (Deceased) (Probate); Walker and another v Badmin and others - [2014] All ER (D) 258 (Nov)

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Re Estate of Elizabeth Jane Walker (Deceased) (Probate); Walker and another v Badmin and others

[2014] Lexis Citation 237

Chancery Division

Nicholas Strauss QC sitting as a deputy judge of the High Court

20 November 2014

Will - Validity - Testamentary capacity - Knowledge and approval - Claimants challenging validity of deceased mother's will - Whether deceased having capacity at time of making will.

Abstract

Will - Validity. The children of a deceased sought to challenge her capacity to make a will, which initially favoured the deceased's former partner. The Chancery Division, in upholding the will, held that the deceased had had capacity to make it and had understood and approved its terms.

Digest

The judgment is available at: [2014] Lexis Citation 237

The deceased had two children, the first and second claimants. In 2007, the deceased left her husband and began to live with the first defendant, B in a rented property. B had curtailed his working hours and income to care for the deceased after she was diagnosed with terminal malignant brain tumour in 2009 and he had remained with her until her death in 2010. Shortly before being diagnosed, the deceased had petitioned for divorce from her husband on the basis of two years separation and consent. A decree nisi was granted in October 2009 and a decree absolute was granted in January 2010. A dispute arose with respect to the deceased's will, which was executed in 2010. Her assets included her share in the matrimonial home (Denge Wood), a claim to a share of her ex-husband's pension assets and her entitlement to a pension lump sum payment. In her will, the deceased left her share in Denge Wood and another property on trust for B for life and, thereafter, for the claimants in equal shares. The residue of her estate was left as to 50% to B and 25% each to her daughters equally. Previously, the deceased had ceded her interest in her mother's estate to her daughters and they had received around £50,000 each. The claimants challenged the will on the grounds that the deceased had not had capacity to make it and had not known of or approved its contents.

The issue for consideration was whether the deceased had had capacity to make the will. Consideration was given to *Banks v Goodfellow*[1861-73] All ER Rep 47.

The court ruled:

Whether a lack of understanding had robbed a testator of capacity was controversial and might depend on

whether the common law as to testamentary capacity had been replaced by the provisions of the Act. *Banks v Goodfellow* had not been replaced by the provisions of the Act. One of the purposes of those provisions was to govern the making of a will by the court on behalf of a person without capacity in his lifetime. It was not intended to affect a retrospective decision by a court as to whether a testator had had capacity to make his own will (see [12], [13] of the judgment).

Applying settled law to the facts, insofar as the deceased had been unable to understand the full consequences of the dispositions in her will, that had not affected her testamentary capacity. One of the reasons for that was that such inability as there was had arisen, not from mental incapacity, but from a failure to take enough legal advice. In all the circumstances, the deceased had had testamentary capacity. She had had to make a difficult choice between her daughters and her partner and she had consciously made a will which largely favoured her partner, B and, in so doing, had understood its terms and had approved them (see [10], [14] of the judgment).

The deceased's last will would be upheld (see [181] of the judgment).

Banks v Goodfellow LR 5 QB 549 applied; *Perrins v Holland* [2009] EWHC 1945 (Ch) applied; *Simon v Byford* [2014] All ER (D) 154 (Mar) applied; *Fuller v Strum* [2001] EWCA Civ 1879 considered; *Hoff v Atherton* [2004] All ER (D) 314 (Nov) considered; *MM, Re; Local Authority X v MM* [2007] EWHC 2003 (Fam) considered; *Scammell v Farmer* [2008] All ER (D) 296 (May) considered; *P, Re* [2010] Ch 33 considered; *Key v Key* [2010] EWHC 408 (Ch) considered; *Gill v Woodall* [2010] All ER (D) 167 (Dec) considered; *Fischer v Diffley* [2013] EWHC 4567 (Ch) considered; *IM v LM (by her litigation friend, the Official Solicitor) (capacity to consent to sexual relations)* [2014] 3 All ER 491 considered.

Oliver Hilton (instructed by Furley Page LLP) for the claimants.

Araba Taylor (instructed by MFG Solicitors) for the first and second defendants.

Karen Shuman (instructed by Reynolds Colman Bradley, LLP) for the third defendant.

Carla Dougan-Bacchus Barrister.