

When should a will be disputed

Mark Keenan discusses the recent case of *Gill v RSPCA*



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Much has been written about the recent decision of *Gill v RSPCA*. The case attracted significant publicity not so much for its legal significance but because of the involvement of a well known charity and a rather unusual set of facts. At the time of writing the RSPCA has indicated its intention to appeal the decision.

The Gill family

John Arthur Gill and Joyce Mary Gill were farmers from Northallerton, North Yorkshire. Dr Christine Gill was their only child. On 27 April 1993, John and Joyce signed 'mirror wills.' By these wills they left everything they owned to each other on the death of the first and in default, to the RSPCA. The wills also mentioned that Christine had not been included because adequate provision had been made during their lifetime (the court was told that Christine had received about GBP13,000 from her parents). The wills were prepared by Denis Argyle, then a solicitor and partner in the Northallerton firm of Hunt & Wrigley. Mr Argyle was unable to remember John and Joyce Gill or anything about their wills. His evidence was that he would not have probed Mr and Mrs Gill about the decision to exclude their only daughter from their wills. Hunt & Wrigley had no file and no record of a file ever being opened or subsequently destroyed.

John Gill died in April 1999. His estate passed to Joyce (who was also named as his executrix), but his will was never proved by her. Joyce died in August 2006. The Gills acquired Potto Carr Farm in 1975. In 1987, a year after they

married, Christine and her husband, Andrew, moved to a property which adjoined Potto Carr. Christine and Andrew spent significant time helping out the Gills on Potto Carr.

The court heard evidence from several witnesses of Joyce's unusual behaviour. She rarely left the house and when she did it was with John or Christine; never alone. She avoided contact with people. It was Professor Robert Howard's opinion that Joyce suffered from the severe anxiety disorder agoraphobia, which severely impacted on all aspects of her life. Rather than seek medical help, John and Christine accommodated Joyce's illness, as families often do. Joyce relied enormously on them for support in her day to day life. The court heard that John was a bully; a stubborn, domineering man prone to losing his temper quite easily, which led to outbursts of fury. Given that Joyce was suffering from agoraphobia, the court accepted that she was dependent on John and deferred to him in fear of his bad temper and outbursts of fury. Christine has one son, Christopher born in 1997.

The claims

The publicity has, perhaps not surprisingly, almost entirely focused on Christine's successful claim to overturn her mother's will; however of equal significance is that Christine succeeded in her alternative claim under the doctrine of proprietary estoppel. This is one of the first reported decisions following the House of Lords decision in *Thorne v Major* and ors [2009] UKHL 18, in which their lordships provided clarification on how the equitable doctrine is to be applied.

Validity claim

In order to succeed in overturning a will on the ground of undue influence, one needs to show that the testator was coerced into making a

will that he or she did not want to make. In *Gill*, the evidence led the court to conclude that the will did not represent Joyce's wishes. As well as the nature of the relationship between them, the court also heard how Joyce had a loving relationship with her daughter (and latterly her grandson) and had an avowed dislike of the RSPCA. It was argued in the alternative that Mrs Gill did not know or approve the contents of the will. The reason why John excluded Christine from his will (they had a good relationship) remains a mystery.

Proprietary estoppel claim

In accordance with the line of authorities recently considered in *Thorne v Major* [2009] UKHL 18, the question for the court was whether, in all the circumstances of the case, it was unconscionable for Mrs Gill not to have left the farm to Christine by her will (assuming that the court had found the will to have been valid).

The principle of proprietary estoppel is as follows:

'...where one person, A, has acted to his detriment on the faith of a belief, which was known to and encouraged by another person, B, that he either has or is going to be given a right over B's property, B cannot insist on his strict legal rights if to do so would be inconsistent with A's belief.' (*Re Basham*, decd [1986] WLR 1498 at 1503).'

In considering this claim, the court accepted that there was a close and loving relationship which existed between Christine and each of her parents and that Joyce, and to a lesser extent John, encouraged Christine's expectation of inheriting the farm. Christine was the only child, who expected to inherit the farm and this expectation was recognised by her parents.

In 1986, John and Joyce suggested to Christine that she and her husband, Andrew, should purchase the adjoining

property, White House Farm (which was not a working farm), so that the 'family controlled the whole patch.' The only reason why Christine and Andrew had any interest in acquiring White House, which was then uninhabitable, in a derelict condition and 55 miles from Leeds, where they both worked, was because it adjoined Potto Carr. The court found that this would have been obvious to John and Joyce.

Shortly before Christine's son, Christopher, was born in June 1997, Christine took maternity leave. She discussed with her mother the question of whether she should return to work full time or part time or cease working altogether. They discussed the financial implications of giving up full time employment and Joyce suggested Christine give up work since she did not think she and John would be around that long and when they were gone Christine would have the farm. Following John's death, Joyce spoke to Christine and Mr Wardman (the farm contractor at Potto Carr, who gave evidence at trial) about this, discussed and implemented the Countryside Stewardship Scheme and took advice from the Forestry Commission. The court heard how Joyce later encouraged her grandson Christopher's interest in farming and discussed with Christine what Christopher would do with the farm.

The court accepted that Christine had acted to her detriment on these assurances through the following:

- The very substantial time and labour which she expended on the farm
- Her decision to adopt an academic career and forego a career in the pharmaceutical industry
- Her decision not to pursue her academic career as a Lecturer but to expend her time and effort working on the family farm
- Returning to part time employment after the birth of Christopher
- Using nearly all her and her husband's savings to purchase and redevelop the dilapidated White House Farm
- Providing daily care and support for both her parents.

The court therefore found that even if it had held that the will was valid, Christine should receive the family farm and the farming business as it would have been unconscionable for her not to.

Some issues for charities

The RSPCA suggested in its public response to the judgment that it was legally obliged (under charitable law) to seek the funds and that it was concerned about the implications of the decision for other charities.

Charities are like any other commercial litigant and can decide whether or not to defend a claim on the basis of the strength of the claim it faces. There is no principle of law which forces a charity to defend a claim that another reasonable litigant would not defend.

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All cases will, of course, turn on their own facts. Charities need to ensure that they use every opportunity available to them to satisfy themselves that a will such as this, where the only child has been written out of the will, truly represents the testator's wishes. If a charity receives a substantial bequest such as this, it should look at the will with a careful eye and it should consider whether it would be appropriate to make 'Re Snowden' ex gratia payments. These can be made by way of compromise where the testator made a solemn, though not legally binding, promise to someone else and that promise was not fulfilled by the will, in order to avoid litigation if possible.

It should not be forgotten that claims will not succeed simply because a disappointed beneficiary feels the will was unfair; there must be grounds for a challenge, which can be supported by evidence.

Points for private client practitioners

Practitioners drawing up wills for clients need to be more alert to possible challenges, particularly where there is an unusual gift or family members are specifically excluded. Whilst traditionally a husband and wife have instructed one solicitor to prepare their wills, good practice would be to treat them as separate clients. They should be

seen separately to ensure that each spouse's own wishes are written in his or her will. Solicitors should satisfy themselves (so much as they are able) that the client is giving his or her instructions freely and without undue pressure. Furthermore, whilst it might seem obvious, solicitors must make a full attendance note at the time the will is drafted and if there is a concern about a possible challenge, keep a copy of the note with the original will, and ensure the file is preserved.

Law Society guidance

Usually solicitors are faced with a request to disclose information about the circumstances surrounding the preparation and execution of a disputed will (see *Larke v Nugus* SW vol 123 (1979) CA). The Law Society has recently provided updated guidance to solicitors who become embroiled in will disputes (*Will Disputes Practice Note* April 2009).

The purpose of a *Larke v Nugus* request (as it has become known) is to prevent money being spent on futile litigation through early pre-action disclosure. The onus is on solicitors to provide 'a prompt reply and relevant evidence to facilitate early settlement' (*Will Disputes Practice Note* April 2009).

In recent years, *Larke v Nugus* requests for information and documentation have often been met with resistance by solicitors, no doubt borne out of a concern that the individual solicitor's conduct is the subject of scrutiny and possible criticism. Solicitors faced with a *Larke v Nugus* request should not charge for providing one.

Where there is the possibility of a negligence claim, solicitors should inform any lay executors and beneficiaries of the disputed will that they may wish to take independent advice as to whether or not the will was negligently drafted, and immediately inform the practice's insurers of the existence of a potential claim.

The present right of testamentary freedom in England & Wales (rather than the European forced heirship method of succession), coupled with an aging and increasingly vulnerable population, brings with it the inevitability of more challenges. That is not necessarily a bad thing when the objective is to ensure the will truly represents the testator's last wishes. ■