IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 39

District Court Appeal No 43 of 2024

Between

1. WZK
2. WZL

… *Appellants*

And

WZJ

… *Respondent*

District Court Appeal No 46 of 2024

Between

WZJ

… *Appellant*

And

1. WZK
2. WZL

… *Respondents*

JUDGMENT

[Succession and Wills — Revocation — later instrument]

WZK and another
v
WZJ and another appeal

[2024] SGHCF 39

General Division of the High Court (Family Division) — District Court Appeals Nos 43 and 46 of 2024
Choo Han Teck J
16, 30 October 2024

30 October 2024 Judgment reserved.

Choo Han Teck J:

1 The facts of these two cross appeals as found by Sobha Nair DJ after eight days of trial are as follows. A divorced man ("the Deceased") died on 20 October 2019, leaving behind three children. The eldest, a daughter ("the first Defendant"), a younger daughter who is not a party to the proceedings, and a son ("the Plaintiff").

2 The Deceased had executed a will on 30 May 2017 (the "May Will") revoking a prior will executed in August 2016. The first Defendant is the executrix and trustee under this will, and the Plaintiff was named the substitute executor and trustee. The three children of the Deceased are the equal beneficiaries under this will, which was properly executed in a lawyer's office in Singapore, and the lawyer was one of the witnesses to the will. The first Defendant and her mother were present. The Deceased had remained on good

terms with his former wife and even stayed at her home until he moved out to stay with the first Defendant after a heart attack in June 2017, shortly after executing the May Will. However, in December 2017, the Deceased moved to Johor, Malaysia. All these are not disputed.

3 The first Defendant, however, denies the Plaintiff's allegation that she had asked the Deceased to leave her home (in Singapore). The Deceased was staying in Johor on the day he died. The trial judge made no finding on this point. The problem arose when a will dated 28 December 2017 (the "December Will") mysteriously surfaced. Unlike the May Will which was properly attested and executed, and which is not contested except on the ground that the December Will had superseded it, the circumstances concerning the December Will were controversial from the beginning to the end, and it was challenged at every turn.

4 A will is not valid by virtue only of it being the last in line. The court must be satisfied that it was properly attested and executed, and that the testator was of sound mind at the time the will was executed. The court must also be satisfied that the will in question was indeed the will of the testator, and that includes proof not only of its proper execution but also that it was indeed the will of the testator. The onus of proving all that to the satisfaction of the court lies on the party wishing to prove its validity. In this case, that would be the first Defendant.

5 The second Defendant is a good friend of the first Defendant and was an administrative staff in one of the Deceased's companies. She had lived with the Deceased in Malaysia for some time prior to his passing and had assisted in his care. She was hitherto a peripheral character and became a prominent witness at trial. She testified that she accompanied the Deceased to a Malaysian lawyer's

("the Lawyer") office on 28 December 2017 to execute the December Will. She was named the executrix and trustee of this will, and the beneficiaries are the two children of the first Defendant, that is, the Deceased's grandchildren. Under the May Will, only the three children of the Deceased are beneficiaries — not the grandchildren. Whereas the nomination for the Deceased's Central Provident Fund ("CPF") money mirrored the distribution of assets in the May Will, he had not changed his CPF nomination after he executed the December Will.

6 The defendants' case focuses entirely on the findings of fact by the trial judge. Mr Gaznavi, counsel for the defendants, submits that the Deceased had good reasons to change his will, and that the facts support this submission. He cites, as an example, the fact that the Plaintiff had blocked the Deceased on WhatsApp. But without more, I do not think that this is a sufficient reason to find that the Deceased was annoyed enough to change his will. Similarly, counsel submits that the Deceased was not evicted from the first Defendant's house and that this was a crucial point showing that the Plaintiff's case was flawed. It is clear to me that the trial judge did not consider the reason for the Deceased moving to Johor to be a significant factor. The contrasting assertions of the parties on this point do not, in my view, prove significant.

7 The second Defendant explained that the Deceased changed his will because the Plaintiff had stolen the title deeds to his (the Deceased's) properties, a claim disputed by the Plaintiff. His evidence was that his father, the Deceased, had often told him that the Lawyer had taken his title deeds and sold the properties. No finding was made with regard to this issue by the trial judge, but she made a valid finding that if that were true, there was no reason for the Deceased to disinherit his other two children. Conversely, the first Defendant testified that it was not remarkable for the Deceased to bequeath his estate to his

grandchildren (her children) because the Deceased was close to them — forgetting that he did not include the grandchildren in the May Will made just months before. The second Defendant's evidence here also betrays the lie that the Deceased changed his will because he was not happy with the Plaintiff. By not changing his CPF nomination, the Plaintiff remains a beneficiary of that part of the Deceased's assets.

8 The trial judge disbelieved the second Defendant when she testified that she did not tell the first Defendant about the December Will until two years after, when the Deceased died. The case for the two defendants became hopelessly tangled as the trial progressed. It transpired at the trial that the Lawyer admitted meeting the Plaintiff and his mother on 6 November 2019 and told them that he did not have a copy of the December Will. He testified that the second Defendant told him that she had given the will to the first Defendant. He was contradicted by the second Defendant who testified that she did not give a copy of the will to the first Defendant. Further, the Lawyer admitted that he met the first Defendant at his office on 13 November 2019 (a week later) where she had with her a copy of the December Will. But he did not have a copy of the December Will made, despite knowing that the Plaintiff and his mother were asking to see it. On this point, the first Defendant contradicted him when she denied bringing the December Will to the lawyer's office on 13 November.

9 The defence called a witness who claimed to be a driver of the Deceased. This witness ("the Driver Witness" — to distinguish him from the other driver) claimed that he was the second witness to the December Will (the Lawyer was the other witness). The Driver Witness completely failed to impress the trial judge. He was unable to identify the ex-wife and children of the Deceased, his nervousness under cross-examination eventually gave way to his breaking down in tears, which the trial judge observed to be more than the normal anxiety of a

witness under cross-examination. The Driver Witness finally admitted that his affidavit of evidence-in-chief was drafted entirely by the Lawyer. His evidence that he drove the Deceased and the second Defendant to the Lawyer's office on many occasions was not consistent with the evidence of another driver who had worked for the Deceased in 2017, and who testified that he had never driven the Deceased to the Lawyer's office, in spite of the Lawyer's claim that the Deceased "approached him for many matters over the years".

10 That brings us to the Lawyer himself. The trial judge was openly critical of the Lawyer's conduct in respect of the will, his connections with the defendants' witnesses, and his own testimony. I agree entirely with the trial judge that a lawyer who drafts a will for his client is expected to retain a signed copy of the will. This Lawyer did not, and seems unable to account for this oversight — if indeed it was an oversight. He ought to have known better than to draft the affidavit of evidence-in-chief of a fellow witness of fact. This was compounded by the fact that the trial judge found that the Driver Witness was "parroting… the [Lawyer] in his affidavit". Had the Lawyer been a lawyer in Singapore he would have been reported to the Law Society of Singapore for disciplinary investigation.

11 The principal witness to the defence seems to be the first Defendant. Her evidence clearly did not impress the trial judge who was sceptical about almost every aspect of her evidence on the main issues. The trial judge was obviously perplexed by some of the actions of the first Defendant which seemed obviously incongruous with the conduct of an honest person, yet the judge was unable to find a conclusive reason on each occasion. This is by no means a fault of the judge, nor can it be relied upon by the first Defendant in her defence. When one examines the evidence as a whole, it seems to suggest that the story and circumstances of the December Will were created by the first Defendant. It was

a plausible story until the holes in it were exposed and the gaps yearned for explanations that never came. Why, for example, did the first Defendant apply for the grant of probate under the May Will when she already knew of the existence (as the evidence revealed) of the December Will? And why did she, having applied and obtained the grant, eventually decline to extract it? Her lame answer to that question — that she decided to honour the December Will — was roundly dismissed by the trial judge. The real reason remains hidden. As did the reason why she did not tell her mother and her brother, the Plaintiff that the Deceased had executed another will in Malaysia. This was itself an odd piece of evidence because, as the trial judge found, it contradicted her evidence that she was only told of the December Will by the second Defendant after the Deceased had died. That raised yet another conundrum. It meant that the December Will was drawn up and executed in the presence of the Driver Witness, the second Defendant and the Lawyer without anyone in the Deceased's family knowing it.

12 I now come to the only aspect in which the defendants are able to launch an argument — it was pressed home by Mr Gaznavi to the best advantage possible for the defendants. That concerns the genuineness of the Deceased's signature and thumbprint on the December Will. It is not disputed that the Deceased had never used his thumbprint in any of his previous documents. The May Will was signed without the accompanying thumbprint. Forensic evidence on the thumbprint proved inconclusive at trial.

13 As to the signature, the Plaintiff's expert testified that the signature was clearly not that of the Deceased's, whereas the defendants' expert testified that it was "probably" the signature of the Deceased. The real issue on appeal is Mr Gaznavi's forceful argument that the defendant's expert was called to counter the Plaintiff's expert, but prior to that, the parties had agreed on a joint

expert from the Health Sciences Authority ("HSA") to save costs. Having obtained the report, the Plaintiff wanted the defendants to pay two-thirds the cost, that is, split three ways among the Plaintiff and the two defendants. The defendants refused. The Plaintiff then asked for a four-month adjournment after which he produced his expert's report that was used at trial. Mr Gaznavi thus asks that I draw the inference that the HSA report is detrimental to the Plaintiff's case. Mr Hsu, counsel for the Plaintiff submits that a party is not obliged to call every expert it had consulted, and due regard should be given to litigation privilege.

14 The issue of the HSA report was fully argued before the trial judge who accepted Mr Hsu's claim on litigation privilege and the fact that the defendants were not prejudiced as they were given time to find an expert in reply, which they did. The trial judge concluded:

> …The 2 reports, from qualified local experts with sound knowledge and utilisation of accepted methods of analysis were in conflict, highlighting the tremendous challenge in relying on handwriting analysis in this case. In any event, … there was nothing limiting the defendants from applying to produce the HSA report.

Unfortunately, the defendants did not apply — until they were before me on appeal, which is a little late. The Plaintiff has opted not to waive his privilege and there is no basis for me to draw an adverse inference against him for this because to do so would lead to an undermining of litigation privilege. In any event, I am of the view that production of the report is not necessary for the reasons in this judgment. Were the report to be produced now, the defendants would be at liberty to apply for cross-examination, unnecessarily prolonging the proceedings. They had their opportunity in the trial below.

15 I examined the Deceased's signature on the December Will and can only say that it was a very short squiggle and may not have much room for comparison. I am of the view that even if the HSA report is against the Plaintiff, there is sufficient evidence on the whole, including the two experts' reports adduced at trial for the trial judge to find as she did. I see no reason to disturb her findings of fact and the conclusion she reached. The defendants' appeal is therefore dismissed.

16 The Plaintiff appealed against the trial judge's decision declining to remove the first Defendant as the executor and replace her with the Plaintiff. For the reasons given in the trial judge's grounds of decision, I am of the view that the Plaintiff's appeal should be dismissed. The assets of the estate are clearly identified and the grant of probate only needs to be extracted. The first Defendant is clearly on notice that she has to discharge her duties faithfully as she will, no doubt, be watched at every step.

17 In the result, DCA 43 and DCA 46 are dismissed. Parties are to submit on the question of costs in writing within 14 days from the date of this judgment.

- Sgd -
Choo Han Teck
Judge of the High Court

Mahmood Gaznavi s/o Bashir Muhammad and Rezza Gaznavi (Mahmood Gaznavi Chambers LLC) for the appellants in DCA 43 of 2024 and for the respondents in DCA 46 of 2024;
Hsu Sheng Wei Keith and Ee Chonghui Callie (Emerald Law LLC) for the appellant in DCA 46 of 2024 and the respondent in DCA 43 of 2024.