IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 28

District Court Appeal No 10 of 2024

Between

WWI

… *Appellant*

And

WWJ

… *Respondent*

JUDGMENT

[Succession and Wills — Testamentary capacity — Mental disability]
[Succession and Wills — Revocation — Later instrument]

WWI
v
WWJ

[2024] SGHCF 28

General Division of the High Court (Family Division) — District Court Appeals Nos 10 of 2024
Choo Han Teck J
31 July 2024

6 August 2024 Judgment reserved.

Choo Han Teck J:

1 The respondent is the third child of 14 children. The appellant is the twelfth. The respondent (in his sixties) is the eldest son, and the appellant (in his fifties) is the fourth son. The appellant is a schoolteacher and the respondent, a businessman.

2 Their father ("the Father") carried on the business of cleaning and recycling oil barrels. His first, second and third daughters helped in the business along with the third son and the respondent. The mother of the litigants and their siblings ("the Mother") was a housewife.

3 The entire family lived in a house referred to at trial as "4 JM". They had lived there even before 1980. The Father bought another house in the

respondent's name sometime in the 1980s. This was referred to as "Old VR" at trial. The appellant claims that this house was meant to be held on trust.

4 The respondent mortgaged Old VR and then demolished it. With the proceeds, he built two semi-detached units in its stead (the new "10 VR" and "10A VR"). He then sold 10 VR and used the proceeds to rebuild 4 JM into two semi-detached houses ("2 JM" and the new "4 JM"). While these two units were being built, the entire family moved into 10A VR.

5 The Father died on 21 June 1993, and thereafter, the respondent and his siblings helped to look after the Mother. In 2005, the Mother told the respondent that the appellant wanted to mortgage 2 JM and she was disconcerted over the idea. The respondent advised her to execute a will and that ("the 1st Will") was executed at the respondent's home on 22 March 2005 in the presence of a lawyer, "CJH" and one "B" as witnesses. In the 1st Will, the Mother bequeathed her entire estate to the respondent, with a testamentary disposition of $5,000 to each of seven named daughters.

6 The other children became aware of the 1st Will and wanted the Mother to change the Will. She did not. Her health deteriorated in 2016. On 28 March 2017 she scored poorly in a Mini-Mental State Examination (14 out of 28 points) and was recommended by the doctor that she undergo a full test. Instead, the appellant made arrangements for the Mother to execute a Lasting Power of Attorney ("LPA") and a new will ("the 2nd Will") at Fortis Law. The lawyer who witnessed the LPA was not called by the appellant to testify. The execution of the 2nd Will was witnessed by the two estate planners from FortisWills, an associate company of Fortis Law. The 2nd Will was executed on 7 April 2017.

7 Under the 2nd Will, the appellant inherited the entire estate of the Mother. The 2nd Will provided that should the appellant predecease the Mother, the appellant's son, will inherit.

8 On 15 June 2017, the respondent brought the Mother for a medical examination and she told him that the appellant had recently brought her to sign some documents and she was becoming uneasy with what she had done. The respondent then arranged for the Mother to execute another Will ("the 3rd Will") along the terms of the 1st Will. This was arranged with CJH, the lawyer who prepared the 1st Will. The only difference between the 1st and 3rd Wills is that the sum of $5,000 to the fourth to tenth daughters was increased to $10,000. It was only after the 3rd Will had been executed that CJH realised that the Mother was nearer to 90 than 80. He then suggested that she be medically examined for mental capacity.

9 On 21 June 2017 the respondent brought the Mother to see Dr JBL, but did not tell him that she already executed the 3rd Will. Strangely, Dr JBL recommended the Mother to see another lawyer, and he recommended "DK", from a law firm called "HW". DK advised that if the Mother was worried about losing her half share in 2 JM, she could execute a transfer of it to the respondent. Dr JBL was again consulted to examine the Mother at the respondent's home. He certified that the Mother was fit to execute the transfer. DK prepared the deed of transfer and it was executed on 25 June 2017, transferring the Mother's share in 2 JM to the respondent. JBL issued a medical certificate on 3 July 2017 certifying that the Mother had the requisite mental capacity to execute the transfer.

10 The respondent was unable to register the deed of transfer because the appellant refused to hand over the original title. The respondent then tried to obtain a replacement certificate from the Singapore Land Authority.

11 By this time, the Mother was beside herself worrying over the loss of her share in 2 JM. The appellant then brought her to be examined by one Dr FN on 10 and 17 July 2017. Dr FN was of the view that the Mother had dementia of moderate severity. He thought that her cognitive decline had begun from at least a year before. He was of the view that any decision made during the past year should be considered invalid "in view of a high likelihood of being susceptible to manipulation and influence". His opinion thus affected both the 2nd and the 3rd Wills.

12 The respondent decided to get Dr JBL to reassess the Mother but he was not able to attend to her. The respondent engaged one Dr NBY instead. With both Dr JBL and Dr FN's reports, Dr NBY reviewed the Mother on 13 September 2017 and determined that she had the mental capacity to execute a statutory declaration for the purposes of extracting a replacement certificate of title. Pursuant to this, a solicitor from HW attempted to execute the statutory declaration, but this failed because the SLA required an order of court but the respondent did not want the matter to be made public through any ensuing litigation.

13 The Mother died on 2 December 2019. On 11 February 2020 the respondent engaged WTL, a law firm, to apply for probate on the strength of the 3rd Will. Thereafter, the eighth sister began asking questions concerning the 3rd Will and the appellant responded by disclosing the 2nd Will in which the Mother had bequeathed her half share in 2 JM to him. Around this time, the appellant also filed a caveat against the Mother's estate.

14 The respondent and the eighth sister began negotiations for a family arrangement whereby the respondent would give half his share of the Mother's share in 2 JM to be divided among the seven sisters. But on 6 March 2021, he reneged and claimed that the 3rd Will be the effective testamentary document of the Mother and her estate should be distributed according to it.

15 In the meantime, there was a diversion in the family drama which arose because the respondent gave the 3rd Will to the appellant's wife when she wanted to see it. But when it was returned, the document was found to be wet and the Mother's thumbprint barely discernible. The respondent then reported the appellant and his wife to the police.

16 A grant of probate was given by order of court on 10 December 2020. The respondent instructed yet another solicitor, LMO, to get the certificate of title from the appellant, but LMO was unable to get the appellant to respond.

17 Attempts at a settlement between the appellant and the respondent went on for more than half a year but eventually fell through and the respondent commenced OS 801 on 24 August 2021 to have 2 JM sold. The appellant commenced FC/Suit 1 of 2022 to revoke the probate obtained by the respondent. The trial commenced on 14 August 2023 before DJ Chiang.

18 On 15 January 2024 DJ Chiang delivered his verdict in which he found the 2nd and 3rd Wills to be invalid and the only valid will was the 1st Will. The grant of probate issued to the respondent in respect of the 3rd Will was revoked but leave was given to him to apply for the grant of probate in respect of the 1st Will.

19 Before me, Ms Hu for the appellant submitted that the DJ's finding that the Mother did not have the mental capacity to make the 2nd Will. She submitted that the learned DJ gave undue weight to the Mini-Mental State Examination scores and insufficient weight to the two estate planners. Neither argument has any merit. It is clear that the learned DJ relied on the overall testimony of Dr FN who seemed to have carried out a more thorough examination of the Mother's mental capacity than the other doctors. Furthermore, his findings, seen in the circumstances before and after the 2nd Will was executed, seems more accurate than any other view. The estate planners appeared to ask cursory questions and, as the learned DJ found, had no idea that some of the answers by the Mother were wrong.

20 Counsel submitted that the 2nd Will "was not made under suspicious circumstances". With respect, it will seem obvious to any impartial observer that both the 2nd and 3rd Wills were made under suspicious circumstances. This is a case where an entitled eldest son and an entitled favourite son tried to outmanoeuvre each other with the objective of gaining their Mother's half share of the property 2 JM. Nothing either of them did regarding those two Wills were aboveboard or transparent. The trial judge found the 1st Will to be valid only because it was the last will standing. None of the siblings challenged it. There is therefore no basis to overturn the trial judge's finding regarding the 1st Will.

21 Back to the 2nd Will, I cannot accept counsel's argument that the appellant was a layman and cannot be expected or taken to understand the legal significance of a formal mental capacity assessment. Not only did the appellant not taken the Mother for a mental capacity assessment, the lawyer before whom he brought the Mother to sign a lasting power of attorney was not called to testify. The appellant was aware that the Mother scored badly in a mental capacity assessment on 28 March 2017, and instead of taking her for a full

mental capacity medical examination, he brought her to a lawyer to execute the 2nd Will on 7 April 2017.

22 Finally, Ms Hu submitted that the DJ did not give due weight to the rationality of the terms of the 2nd Will. The central issue, however, is the mental capacity of the testator, the Mother. If she did not have the mental capacity, and the Will appears rational though the lion's share goes to the appellant, all this shows is that the terms, and hence, the rationality of the Will, emanated from the appellant and not the Mother.

23 The appellant seemed the more grasping of the two brothers, but the extent the respondent went in defence of what he must have regarded as his entitlement under the 1st Will was hardly ethical. When he knew that the certificate of title was with the appellant, he had DK prepare a statutory declaration for the Mother stating that she had lost the certificate.

24 For the reasons above, the appeal is dismissed. Neither party deserve costs so they will each pay his own. They may reflect on the Fun lines: "Some nights, I stay up cashing in my bad luck / Some nights, I call it a draw".

- Sgd -
Choo Han Teck
Judge of the High Court

Daniel Koh and Hu Huimin (CNPLaw LLP) for the appellant;
Chung Ting Fai (Chung Ting Fai & Co) for the respondent.