

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

**2019
PRO/NPR/CPR/00035**

IN THE MATTER of the ESTATE of Ervin Knowles late of Wulff
Road in the Eastern District of the Island of New Providence one
of the Islands of the Commonwealth of The Bahamas, Deceased.

BETWEEN

**(1) TINA- MARIE KNOWLES
(2) EMILE E. KNOWLES
(3) ENRIQUE M. KNOWLES
(4) TERI M. KNOWLES**

Plaintiffs

AND

ERVIN K. DEAN

Defendant

Before: The Hon. Madam Justice Donna Newton

**Appearances: Mr. Rhyan Elliot for the Claimant
Ms. Travette Pyfrom for the Defendant**

**Hearing Dates: February 2023 – 20th, 19th
May, 2023 -19th; April 2023 – 23rd
November 2023 – 1st, 8th, 13th, 14th, 15th, 16th, 17th, 20th, 21st, 28th,
April 2024 – 10th, 8th, 15th,
May 2024 – 8th, 9th, 29th, 30th, 31st,
June 2024 – 6th**

***Probate - Probate -Validity of Will - Suspicious Circumstances -
Testamentary capacity - Application for will to be declared void –.***

***Held:** Grant of Probate set aside. Earlier Will to be admitted to Probate.*

Judgment:

JUDGMENT

The instant action by the Plaintiffs is for an order pronouncing against the force and validity of a Will purportedly executed by Ervin Knowles, (the Deceased) in August 2017 (the 2017 Will) and revoking the Grant of Probate issued to the Defendant. Additionally they are requesting an order that the court pronounces in favour of a Will executed by the Deceased on the 12th April 2000 (the 2000 Will) and a grant of probate be issued thereto.

Background

The Deceased died on the 20 January 2019, at aged 84. Under the 2000 Will he appointed the Plaintiffs (his children) as Co- Executors and Trustees along with his wife (their mother), Stella Knowles. They are all beneficiaries under the 2000 Will.

Under the 2000 Will the Deceased devised his entire estate to his Trustees on trust for his wife and after her death to his named children as follows:

- (i) 51% to Emile E Knowles;
- (ii) The remaining 49% to Tina Marie Knowles, Ervin L Knowles, Teri M Bethel, Enrique Knowles and Tietchka Laura Vanderpool-Wallace in equal shares.

The Deceased allegedly gave instructions for a second Will in 2016 (the 2016 Will) where he appointed the Defendant as the sole executor and disinherited his Wife and his children of the marriage. This Will however was never executed.

Under the 2017 Will he appointed the Defendant the sole executor and one of the beneficiaries. The Defendant is also a son of the Deceased, but outside of the marriage.

Under the terms of the 2017 Will the testator disinherited the Plaintiffs. He devised his property as follows:

i) on trust to provide for scholarships for the needy and deserving children of the Commonwealth of The Bahamas.

ii) 5% to Stella Knowles;

iii) 5% to Ervin Leroy Knowles;

iv) 5% to Tietchka Vanderpool Wallace;

v) 5% to Desiree Chamene Arceneaux;

vi) 5% to Dominique Theo Knowles;

vii) 5% to Ervin Kennedy Knowles;

viii) 5% to Dr. Deborah Bartlett;

ix) 5% to David Barr

It is worth noting that under the 2017 Will all of the beneficiaries are said to be children of the deceased, born outside of his marriage, with the exception of Tietchka and Barr. It is also worth noting that the terms of the 2017 Will is very similar to the 2016 Will, except that Mr David Barr is added as a Trustee, the Deceased's wife receives a gift and there is a gift to a charity.

I must point out here that for this judgment, I did not have the benefit of submissions on behalf of the Plaintiffs.

The Issues

There are several issues in this matter, namely:

i) Whether the Deceased's medical condition coupled with his drug use and alcohol consumption rendered him incapable of giving instructions to prepare, finalize and to execute the 2017 Will.

ii) Whether the Deceased gave Mr. Thomas Evans, K.C. instructions to draft and finalize the 2017 Will.

iii) Whether Mr. Evans, drafted or instructed Ms. Annette Neely to draft and finalize the 2017 Will in his Chambers, or at all.

iv) Whether Ms. Neely sent the 2017 Will to the Deceased for his approval.

v) Whether the Deceased gave Mr. David Barr instructions to prepare and/or draft the 2017 Will.

vi) Whether Mr. Barr drafted and finalized the 2017 Will with the Deceased's knowledge and approval.

(vii) Whether Mr. Barr exerted undue pressure and/or influence over the Deceased as to the contents, preparation and/or drafting of the 2017 Will?

viii) Whether the Deceased had knowledge of and approved the contents of the 2017 Will.

ix) Whether the Deceased, at the time he gave instructions to prepare the will, and at the time of its execution, understood the nature of his acts and its effects?

x) Whether the Deceased executed the 2017 Will at his home on Wulff Road, or at all.

xi) Whether, in light of the Deceased's advanced age and medical conditions, Mr. Evans, K. C. ought to have sought and obtained an independent medical assessment of the Deceased's testamentary capacity.

xii) Whether the 2017 Will is valid.

The Plaintiffs' case

The Plaintiffs are claiming that the Deceased lacked the requisite capacity to execute the 2017 Will. They claimed that at the time he abused alcohol and prescription drugs, was a chronic smoker and suffered from lung cancer, severe anxiety, constant panic attacks, depression and several other physical ailments.

They also claim that the Deceased was in a "committed marital relationship" for 65 years. That he and his wife lived with the 3rd Defendant until that home was destroyed by hurricane in 2016 when he relocated his residence to his office in Wulff Road with his daughter Tietchka and remained there until his death.

Tina Knowles (Tina) (1st Plaintiff), the eldest child, gave evidence that she provided financially for her father, the Deceased until his death. She explained that she paid for his caregiver, housekeeper, utility bills, medical bills as well as his medications. She said she often chastised her father for smoking and drinking too many beers (6 bottles a day). She also stated that she and the other siblings were concerned with her father's drinking, abuse of prescription drugs, and smoking while suffering with lung cancer and therefore called a family meeting with the siblings and the Deceased to discuss this. She said that the

Deceased referred to it in correspondence as “a Summit Meeting”. She said she preferred to refer to it as an “Intervention”.

Tina admitted that she did not reach out to his doctor regarding a mental health issue. She also said that she was concerned with David Barr’s relationship with her father because, she claimed, she watched him drink alcohol with her father and at times when he returned her father to his home he (her father) was frequently drunk and belligerent .

She alleged that the persons who were “*around*” her father supplied him with excessive alcohol and prescription drugs. She identified them as Natasha Barry, David Barr and her sister Tietchka. She stated that the relationship with Barr and her father ceased in August 2017.

She stated that her father often asked her for huge sums of money to pay to Barr to satisfy a loan. She also explained that her father advised her that Barr was in communication with an investor who “*was coming with \$1 billion to invest in Fraser Hog Cay*”, property owned by the Deceased.

She said that the Defendant, whom she referred to as Ken, was never “*a part of her our family structure. He’s never been to our family house*”.

Enrique (3rd Plaintiff) gave evidence that his parents lived with him until his home was destroyed by hurricane. He said his father asked him to record everything. He explained that he had a camera system installed at his home which recorded activities with his father and visitors to his home at the time his parents resided with him. Among the recording was David Barr bringing what appeared to be a case of Heineken Beer to the apartment where his parents resided. Also, what appeared to be a recording of his sister Teitchka giving his father prescription drugs. Teitchka, he stated was a drug addict. He did state that he did not witness his father ingesting anything from her. He admitted purchasing beers for his father as well.

He said he did not want anything to do with his father’s medication after he realized he was abusing it. He said his father abused his medication before he came to live with him and that his father left his house in October 2017 after it was destroyed by hurricane.

He gave evidence that he told Natasha Barry not to give his father anymore medication because she was going to kill him. He said when his father was diagnosed with lung cancer in August 2017 he (the father) did not want anyone to know.

Dr Angela Kuntz, an internal medicine specialist who treats adult patients said she treated the Deceased from 2015 to 2018. She said in addition to treating him for various medical issues she also treated him for anxiety and at times she got the impression that the Deceased did not quite understand her instructions.

Dr Lynwood Brown, an Emergency Room Physician said he provide concierge house calls. He stated that he treats all emergencies including psychiatric issues but he has never treated the Deceased for any psychiatric issues.

He admitted that he was the stepfather of Emile Knowles' (4th Defendant) daughter but that the relationship ended three years before he treated the Deceased.

The Defendant's attorney objected strenuously to Dr Brown's evidence on the basis that he was a relative and as such he should not have treated the Deceased.

Dr Brown stated that, at the time he treated the Deceased, he was not a relative. He explained that a "*relative is someone that you have an emotional attachment or blood connection*".

He said he only saw the deceased in emergency cases and treated him for acute issues, pain and breathing.

The Defendant's case

The Defendant is denying that the Deceased lacked the capacity to give instructions and execute the 2017 Will. Further they say he was not unduly influenced when he executed the 2017 Will.

Arnette Neely (Neely) gave evidence on behalf of the Defendant. She stated that she is very familiar with the Deceased having been introduced to him since 1997 through her employment as Assistant to Thomas Evans, KC, deceased. She stated that she has worked with the firm of Evans & Co, for over 20 years,

She said she knew him up to the time of his death. Ms Neely explained that she had formed a bond with the deceased. She described their relationship as "*he became almost like family and a friend*". She said that she was familiar with some of the Deceased's children and that he introduced persons who had relationships with the Deceased, Mr Barr, Natasha Barry, Judith Hanchell, and Sameka Johnson. She stated that she was not introduced to the Defendant before the Deceased's death. She said she got his contact from the Deceased's office.

Her evidence is that in 2016 the Deceased attended Mr Evans office together with Mr David Bar. She said ***“I did not participate in this at the time”***. She explained that the Deceased requested Mr Evans to prepare a Will for him where he excluded his wife and the children of the marriage. According to Ms Neely, this draft was sent to the Deceased for approval but he never responded until sometime in 2017.

At one point in her evidence Ms Neely said Mr Evans, the Deceased and Mr Bar were were alone in the meeting when the instructions were given for the 2016 Will and later she said the Deceased and Mr Evans were alone and that that was the first and last time she met Mr Barr.

Ms Neely said the Deceased gave instructions in 2017 to Mr Evans to make changes by way of a handwritten note. The Plaintiff objected strenuously to this evidence asking the court not to allow it as there was no proof other than Ms Neely's that this was instructions given to Mr Evans by the Deceased to prepare the 2017 Will.

Ms Neely explained that the changes were made and communicated to the Deceased whereby the Deceased called the office and confirmed his approval to the changes. She said the approval was further confirmed by way of an email from Mr Barr. As a result, she along with an Associate of the firm attended the Deceased's home where they met the Deceased and Mr Barr. She said she questioned the Deceased as to whether he knew what day it was and why they were there. Afterwards he appeared to read it, he executed it and she and the Associate witnessed it.

Natasha Barry, another of the Defendant's witnesses said she was previously employed by the Deceased, from 1996 to 2007, however after she left his employ she continued to visit him on a daily basis. She described their relationship as akin to that of a ***“father /daughter”***. She stated further that she took him breakfast in the mornings and would visit again in the evening. She said she knew that he drank a lot of beers but had only seen him inebriated once. She stated that she was aware that Tina and Emile provided funds to take care of him and that they paid his bills.

The Defendant, Ervin Kennedy Dean (Dean) admitted that he bought the Deceased beers and drank with him but denied that he bought him cigarettes. He explained that the Deceased paid for part of his high school education and paid for his college education. That he grew up with his mother and admitted that he never visited the Deceased's home. However he said that his father informed

him about a job at Bahamas Electricity Corporation (now BPL) to which he remained employed for some 30 years.

He said he assisted the Deceased but did not explain the extent of the assistance. He admitted that he never provided financial assistance to his father for any of his medical treatment or provided financially for any care nor did he assist in any of the funeral expenses.

He explained that he was aware of the 2017 Will from his father who advised him that he (the Deceased) was adding him (Dean) to his Will and that his father asked him to locate the addresses of the other children (not within the marriage) for him (the Deceased) which he did. He said he was unable to locate Debbie Bartlett and Kirk Knowles.

Mr Dean in his witness statement went to great details as to why the Deceased disinherited each of his children within the marriage. The Plaintiff strenuously objected on the basis that they were hearsay.

Mr David Barr's evidence is that he drove the Deceased to his office and to other business places when he (the Deceased) stopped driving himself. He admitted to purchasing beers and cigarettes for him but said he had never seen him inebriated. He also denied that he purchased medication for him. He denied that he ever saw the Deceased ***"consume alcohol and take drugs"***. He explained that he took cases of beers for the Deceased many times from his truck to his home when he resided with his son.

He stated that he assisted the Deceased with several of his business dealings and in the sale of land. He explained that he prepared emails on behalf of The Deceased and on occasions he signed on his behalf. He stated that when the Deceased gave instructions for the 2016 Will it was just the two of them present and that it was typed by him (Barr). He also admitted to discussing the "Anguilla Beach Property" with the Deceased while he was hospitalized, prior to his death.

Regarding the execution, he said when they (Ms Neely and the Associate) arrived with the Will he was present at the Deceased's home and he got up and went outside, He said he did not see the Deceased sign it, or heard when Ms Neely spoke to him about it. He said that he loaned the Deceased \$36,000, which was not reduced to writing.

The Law and Analysis

Capacity

The burden of proving testamentary capacity begins with the propounder of the will. Where a Will is executed and on its face it appears rational then the court will presume that the testator had capacity. In such a case the burden is on the objector to raise a real doubt about the testator's capacity. Once a real doubt is raised then the burden shifts to the propounder of the Will to establish that it is the free will of the testator **Banks V Goodfellow (1870) LR 5 QB 549**.

Evidence of lack of capacity may be obtained from medical and lay witnesses. In the instant case the medical evidence that the Plaintiff's sought to rely on are from Dr Kuntz and Dr Brown who treated the Deceased for physical illness and both admitted that they never treated him for any psychiatric issues or referred him for any such treatment.

I accept the evidence of Tina and Enrique that the Deceased abused alcohol and drugs during the time of the instructions and execution of the 2017 Will and reject the evidence of Mr Barr that he never saw the Deceased consume alcohol or abuse drugs or was inebriated. As a result, I find that the Plaintiff's have raised a doubt as to the Deceased's capacity to give instructions and execute the 2017 Will.

Having found such, it is then for the Defendant to produce evidence to show that the Deceased freely gave instructions for the 2017 Will to be prepared and that he freely executed it.

The Defendant's evidence is that the Deceased gave instructions for the 2016 Will to be amended. The amendments were in the form of handwritten notes on a piece of paper under the hand of the Deceased that was given to Mr Evans. According to Ms Neely, Mr Evans asked her to prepare the 2017 Will using the amendments. She said that she knew that the handwriting was that of Mr Knowles as she was familiar with his handwriting having seen it over a number of years. The Plaintiffs strongly objected to this evidence as hearsay and that Ms Neely is prohibited from proving the document because she was not the author of it.

Ms Neely said once she completed the draft she forwarded it to Mr Knowles by email for approval. She stated further that the Deceased called Mr Evans to note his approval. It is worth noting that there was nothing produced to substantiate this call. After the phone call she said that she received an email

from Mr Barr approving the draft. Unfortunately Mr Evans was not able to give evidence in this matter.

She further stated that she along with an Associate visited the Deceased's home for him to execute the 2017 Will. Having questioned him as to his knowledge of why they were there she proceeded to have him execute the Will. It is worth noting that she asked the questions instead of the Associate, a legally trained person.

There is no evidence that the Will was explained to him or that it was read over to him.

Considering the above, I am not satisfied that the instructions are those of the Deceased or whether they were freely given, therefore it cannot be said that the Defendant has discharged his burden.

Suspicious Circumstance

The Plaintiff's state that the courts vigilance and suspicion should be excited by the circumstances surrounding the execution of the 2017 Will.

The case of **Barry v. Butlin (1838) II Moore 480** laid down the principle of suspicious circumstance,

“it is twofold, that the onus probandi lies in every case upon the party propounding a will; and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator. Secondly that if a party writes or prepares a will under which he takes a benefit, that is a circumstance which ought generally to excite the suspicion of the Court”.

The test (according to **Lord Wilberforce in Lucky v Tewari (1965) 8 WLR**) is that the evidence which gives rise to suspicion must create a real doubt whether the testator knew and approved of the contents of the will.

Suspicion could be aroused in varying degrees and depending on the circumstances and what is needed to dispel the suspicion would vary accordingly. (**Fuller vs Strum (2002) 2AER**)

Applying **Lord Wilberforce's** test to the instant case, the facts that I find that give rise to suspicion and thereby create a doubt as to whether Mr McKenzie knew and approved of the contents of the will are;

It is therefore incumbent upon the Defendants to discharge the burden of establishing that the will represents the Deceased's testamentary intentions. If suspicion is aroused and not removed the Court may exercise its discretion and set the Will aside.

In order to determine whether the Defendants have discharged this burden it is necessary to examine the evidence of the witnesses and draw inferences from what was presented.

I find that Ms Neely was not readily forthcoming with her answers in cross examination, particularly regarding the instructions for the 2017 Will. Her answers were not spontaneous, she seemed to anticipate each question before answering.

Mr Barr's evidence was that at the time the 2017 Will was executed he did not recall the Deceased being ill or bedridden. When questioned as to why she attended his home rather than have him attend her office to execute the 2017 Will as he did on all other occasions, Ms Neely's explanation was that she did not think he was unwell she thought "he just didn't feel like coming out". I find that this gives credence to the Plaintiff's case that at the time the Deceased was too ill and was on oxygen and therefore was unable to leave his home.

Mr Barr admitted to being alone with the Deceased when he gave instructions for the 2016 Will which eventually became the 2017 Will with amendments.

There is no evidence other than the handwritten notes on a piece of paper, purportedly from the Deceased, instructing Mr Evans to prepare the 2017 Will.

Evidence from both the Plaintiffs and the Defendants' witness Ms Barry show that the Deceased's children inside the marriage supported him financially and provided for his needs in addition to paying his utilities.

The Defendant's evidence is that he did not provide anything for the Deceased except for occasions when he purchased some beers for him. In his witness statement he explained that he always had a ***"respectful and civilized relationship"*** with his father and in 2013 his father began sharing certain of his business information with him. He said he visited him once while he was in hospital just prior to his death. He also said he did not share in the funeral expenses of his father. No obvious and compelling reason given as to why the Deceased would favour the Defendant over his children of the marriage who continued to care for him up to his death.

The only explanation given are allegations by the Defendant, stating specific faults he said the Deceased told him as to why he disinherited his children of the marriage in favour of his children outside the marriage, some of whom the evidence shows he had no relationship with, I find that all the reasons stated by the Defendant are all self-serving.

I observed the Defendant's demeanour on the witness stand and found him to be unnecessarily defensive, aggressive and combative when giving his evidence.

Evidence show the Defendant and Barr expressed interest in the Deceased's real estate.

In Devillebichot (deceased) Brennan v Prior and others (2013) All ER (D) (Sep) the court found as suspicious the fact that the will was drawn by members of a family who stood to benefit under it. The fact that Mr Barr admitted to drafting the 2016 Will and approving the contents of the 2017 Will I find is suspicious.

Undue Influence

The Plaintiff's also claim that Mr Barr exerted undue influence over the Deceased in executing the 2017 Will. They claim that Mr Barr was a close and trusted friend of the deceased for a number of years. They allege that the Deceased was dependent on Mr Barr to provide him with alcohol and cigarettes and transportation. That Mr Barr had complete access to the Deceased's home and accounts.

The evidence show that Mr Barr had access to the Deceased's email and would send and respond to emails on the Deceased's behalf. He admitted that he assisted him in the sale of one of his properties but denied that he was supposed to get a commission. He said the Deceased approved him sending the Will and signing his (Barr's) name to it. He also admitted to seeing the Deceased used an inhaler and knowing that he had lung cancer he admitted to purchasing cigarettes and beer for him.

In the eyes of the law, undue influence may be described as coercion **(Wingrove v Wingrove (1885) 1 PD 81)**. The question, is, whether in making his dispositions the testator has acted as a free agent.

Based on the above reference to Mr Barr's association with the Deceased. The fact that he admitted to drafting the 2016 Will which contains the exact details of the 2017 Will except for the addition in the 2017 Will of Barr as a trustee, a gift to the Deceased's wife and a gift to a children's charity; the fact that he was

present at the home/office of the Deceased when Ms Neely and the Associate attended to have the Will executed; the fact that he had access to the Deceased's office, his documents and accounts, are instances I find of undue influence.

Conclusion

On a balance of probability I find that the Defendants did not discharge their duty to the required standard. Applying Lord Wilberforce's test, based on the above, there is doubt whether the Deceased knew and approved of the contents of the 2017 Will.

I find that the circumstances mentioned above show Mr Barr exerted undue influence over the Deceased.

I find therefore:

- That an Order is granted pronouncing against the validity of the 2017 Will.
- The Grant of Probate issued on the 23rd October 2019 is revoked.
- The 2000 Will be admitted to Probate.
- The costs of this action to follow the event to be taxed if not agreed.

Dated this 28th day of February 2025

A handwritten signature in black ink, appearing to read 'D Newton', written over a horizontal line.

The Honourable Justice Donna D. Newton