Neutral Citation Number: [2022] EWHC 1000 (Ch)

Claim No: PT-2020-LDS-000157

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

In the estate of Steven Philip Cooper deceased (Probate)

Leeds Combined Court Centre,
The Courthouse,
1 Oxford Row,
Leeds, LS1 3BG.

Date: 06/05/2022

Before:

HH JUDGE KLEIN SITTING AS A HIGH COURT JUDGE

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Between:

(1) LAUREN VICTORIA COOPER
(a child, by her litigation friend Sara Jane Cooper)
(2) JESSICA ROSE COOPER
(a child, by her litigation friend Sara Jane Cooper) **Claimants**
- and -
(1) KAREN MARIE CHAPMAN
(2) JUDITH GERALDINE EDWARDS
(3) ANNE HATTON **Defendants**

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David Rose (instructed by **Shakespeare Martineau LLP**) for the **Claimant**
Elis Meredydd Gomer (instructed by **Bromleys Solicitors LLP**) for the **First Defendant**

Hearing dates: 20-22 April 2022

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HH JUDGE KLEIN

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 a.m. on 6 May 2022.

HH Judge Klein:

1. Dr Steven Cooper died suddenly on 20 July 2019. He is survived by his children, the First and Second Claimants, who are now 16 years old and 14 years old respectively. He is also survived by the Claimants' litigation friend, their mother ("Ms Cooper"), who married Dr Cooper on 10 August 2003 and was divorced from him on 9 June 2016, and by his partner, the First Defendant ("Ms Chapman"), with whom he was in a relationship from April 2015.

2. Dr and Ms Cooper's divorce was a difficult one by all accounts; both in relation to financial matters and in relation to the arrangements for their children, the Claimants. There has also been a complete breakdown in relations between Ms Cooper and Ms Chapman following Dr Cooper's death, as a result of what seem to me to have been innocent misunderstandings and a lack of communication.

3. Dr Cooper was a highly regarded chemistry teacher at Bolton School from 2002 until August 2018, when he retired on grounds of ill-health. The circumstances leading to his ill-health and divorce are sad.

4. Ms Cooper was a child victim of crime. She made a claim to the Criminal Injuries Compensation Authority and was awarded about £292,000 in December 2014. The letter confirming the award was sent by her solicitors to Ms Cooper on 4 December 2014. The letter was read by Dr Cooper. As well as setting out the amount of the award, the letter referred to the possibility of Ms Cooper setting up a personal injury trust. Perhaps linked to Ms Cooper's claim or its impending settlement (as suggested at trial), in November 2014 Dr Cooper suffered a very sudden and catastrophic decline in his mental health. Shortly after (in fact shortly after Ms Cooper received the 4 December 2014 letter), Dr Cooper was admitted to hospital as a psychiatric inpatient. Whilst he was in hospital, Dr Cooper kept a diary, which makes for difficult reading. It may be relevant, as I shall explain, that, in the diary, he misspells the word "screaming".

5. Although Dr Cooper was discharged from hospital in January 2015, he continued to suffer mental ill-health, sometimes significant mental ill-health, for the rest of his life. By January 2015 Dr and Ms Cooper's marriage had broken down and, in February 2015, Ms Cooper began divorce proceedings, which concluded with the grant of a decree absolute in June 2016, as I have noted. Following the breakdown of Dr and Ms Cooper's marriage, Ms Cooper moved with the Claimants to a new home. Ms Cooper did set up a personal injury trust and the new home is a trust asset. The Claimants are not trust beneficiaries.

6. From about February 2015, Dr Cooper ceased to have direct contact with the Claimants.

7. As I have indicated, Dr Cooper and Ms Chapman began a relationship in April 2015, having been childhood friends.

8. In November 2017, the Family Court barred Dr Cooper from having any direct or indirect contact with the Claimants.

9. Between 2017 and 2019, Dr Cooper apparently took steps to nominate Ms Chapman as a beneficiary of the death benefit payable under his occupational pension. (Whilst the identity of the nominator is not in evidence, because the nomination was completed online, there is no evidence, and there has been no suggestion, that the nominator was not Dr Cooper). The evidence suggests that Dr Cooper nominated Ms Chapman as a beneficiary twice. The circumstances of the second nomination are as follows:

   i) Dr Cooper[1] started to complete an online nomination form naming Ms Chapman as a beneficiary of the death benefit on 3 July 2017 (possibly at about the same time as the document identified as a possible July 2017 draft will by the experts may have been created). The nomination form was saved but not submitted;

   ii) Dr Cooper opened the nomination form again on 11 April 2018. He saved it a second time but, again, he did not submit it;

   iii) Dr Cooper opened the nomination form a third time on 17 February 2019 and, on this occasion, submitted the form, together with a change of address form. Only Ms Chapman was nominated a beneficiary of the death benefit.

10. As I have said, Dr Cooper died on 20 July 2019.

11. Dr Cooper made a will on 4 June 2009 ("the 2009 will"), which, in the circumstances which have happened, appointed the Second and Third Defendants as his executrices[2] and which left his estate to the Claimants, contingent on them reaching 21 years old. By the claim, the Claimants principally claim to prove the 2009 will.

12. Ms Chapman counterclaims that Dr Cooper made a will on about 27 March 2018 ("the 2018 will"), which has since been lost, and she principally claims to prove the contents of the 2018 will.

13. The 2018 will was a homemade document. It[3] was entitled "Last Will and Testemant" *(sic)*, although "testament" was correctly spelt in the body of the document. In the usual way, the 2018 will provided for the revocation of earlier wills. Further, by the 2018 will, Ms Chapman was appointed Dr Cooper's executrix, a £1,000 pecuniary legacy was given to Bolton School and Dr Cooper's residuary estate was left to Ms Chapman, but, if the gift to her failed, to the "Royal Manchester Childrens' Hospital" *(sic)*; the hospital which provided the First Claimant with significant care when she was born. The document made no provision for the Claimants, recording instead that:

> "I am fully aware that I have given nothing to my two estranged children…and do not wish them to receive anything from my estate. They were fully provided for during the financial settlement of my divorce from their mother and I made that arrangement with this in mind."

The document also recorded as follows:

[1] To be precise, a computer user.
[2] The executrices play no part in the proceedings.
[3] More precisely, a draft of it which is in evidence.

> "I wish my body to be disposed of either by buriel *(sic)* or cremation, at the discretion of my executor."

14. Ms Chapman claims that the 2018 will was (1) signed by Dr Cooper on about 27 March 2018, that (2) he intended by his signature to give effect to the document as his will, and that (3) he acknowledged his signature in the presence of Dorothy Hartley and James Hartley (Ms Chapman's uncle), (4) who were present at the same time and (5) who then attested and signed the document in Dr Cooper's presence. Ms Chapman therefore contends that the 2018 will is a valid will which satisfies the requirements of s.9 of the Wills Act 1837.

15. Ms Chapman accepts that the 2018 will was last known to be in Dr Cooper's possession and, because it has since been lost, that she must establish that Dr Cooper did not destroy it with the intention of revoking it, if it is to be proved; assuming, of course, that it was duly executed. She contends that the 2018 will, having been duly executed, was not destroyed by Dr Cooper with the intention of revoking it because:

    i) the 2018 will was only made shortly before Dr Cooper died and there had been no material change in circumstances in the interim;

    ii) the revocation of the 2018 will would benefit the Claimants, as it turns out, at the expense of Ms Chapman, which is not what Dr Cooper wanted.[4]

16. Although the 2018 will has been lost, Ms Chapman claims that she found a draft of it on a computer which Dr Cooper used, although the 2018 will was drafted on a different computer that he used. Troublingly (because it might amount to a breach of Ms Chapman's document preservation duty (see paragraph 3.1 of CPR Practice Direction 51U – Disclosure Pilot for the Business and Property Courts)), the computer on which Ms Chapman claims to have found the draft of the 2018 will is not in the same state it was when Dr Cooper died. Instead, Ms Chapman arranged for data to be removed from it after the dispute had arisen. She says that the only data she arranged to be removed was her personal data and that of her teenage son, because she did not want Ms Cooper to be able to obtain that data, relations between them having completely broken down.

17. The parties have instructed computer experts, who did not give oral evidence, but who are apparently in complete agreement, as follows:

    i) the draft of the 2018 will was created on 24 January 2018;[5]

    ii) the draft of the 2018 will was last saved on 20 March 2018;

    iii) the draft of the 2018 will was last modified on 20 March 2018;

[4] It seems to me that this is just another way of articulating the contention that there was no change in circumstances between the making of the 2018 will and Dr Cooper's death.

[5] To be precise, the dates given are those contained in the metadata. It is possible that the dates are wrong, if the clock on the relevant computer was set to the wrong date. However, there is no reason to suppose that that might have happened. In those circumstances, I infer that the computer clocks were properly set.

iv) the draft of the 2018 will was copied to the hard drive of the computer where it is now located (and where Ms Chapman claims to have found it) on 4 February 2019;

v) since the draft of the 2018 will has been on that hard drive, it has not been modified.

Their evidence also suggests that a July 2017 draft will relating to Dr Cooper may exist in the Cloud – but the contents of that document have not been established.

18. The Claimants dispute the validity of the 2018 will. Indeed, they go so far, in paragraph 6 of their Reply and Defence to Counterclaim (when read with paragraph 61 of their counsel's skeleton argument), as to deny that Dr Cooper signed any document purporting to be a will on about 27 March 2018 or that Mr and Mrs Hartley signed any document purporting to be a will then. At trial, Mr David Rose, who represented Ms Cooper and the Claimants, confirmed to me that it is the Claimants' case that Mr and Mrs Hartley did not sign any document on about 27 March 2018.

19. The Claimants also rely on the following matters as calling into question the validity of the 2018 will:

i) Dr Cooper was a meticulous record-keeper. Amongst other document storage methods he used, he was adept at storing, and did store, documents electronically, including by photographing "things" and storing the photographs electronically. Yet, they say, there is no evidence of a duly executed 2018 will having been stored electronically;

ii) Dr Cooper was careful about spelling and grammar; particularly in formal documents. Yet, they say, the 2018 will contains a number of spelling and grammatical mistakes;

iii) Dr Cooper always wanted to be cremated, but the 2018 will leaves it to Ms Chapman to decide how his body should be disposed of;

iv) Dr Cooper made no financial provision for the Claimants in the divorce. The 2018 will therefore wrongly recorded that he did;

v) It was cruel, they say, to have made testamentary provision for Royal Manchester Children's Hospital, but none for the Claimants;

vi) Dr Cooper is unlikely, they say, to have made an unrestricted gift to Bolton School, which he would have appreciated could have been spent on overheads. It is likely that he would have made a gift to the school, but it is likely that he would have made it for a particular purpose in which he had an interest;

vii) Dr Cooper is unlikely, they say, to have made a home-made will;

viii) Mrs Hartley gives evidence that the document which she signed in March 2018 contained a gift to Bolton School in the event that Ms Chapman pre-deceased Dr Cooper. However, the 2018 will does not contain such a qualification;

ix) the Claimants' solicitors made a number of requests that Mr and Mrs Hartley make statements, but they only did so in June 2021. Ms Chapman's excuse for the delay – the Covid pandemic – is not sustainable, the Claimants say;

x) Ms Chapman's solicitors did not mention the existence of the 2018 will until 25 November 2019, even though they had had a number of opportunities to do so beforehand.

20. The Claimants also contend that Ms Chapman cannot establish that Dr Cooper did not destroy the 2018 will or that he did not intend to revoke it (assuming always that it was otherwise valid) because:

i) Dr Cooper never apparently referred to the 2018 will after March 2018 in the sixteen months before he died;

ii) it is Ms Chapman's case that the 2018 will was a temporary measure to protect her, and to protect Dr Cooper's assets, until she and Dr Cooper could both execute professionally drafted mirror wills, but that never happened;

iii) following the making of the 2018 will, Dr Cooper made significant lifetime gifts to Ms Chapman of £95,000;[6]

iv) following the making of the 2018 will, Dr Cooper nominated Ms Chapman as the beneficiary of his occupational pension death benefit;

v) the relationship between Dr Cooper and Ms Chapman was not stable, permanent or full-time, they say;

vi) Dr Cooper knew that Ms Chapman was upset that he had made no testamentary provision for the Claimants, a decision she says was "just not him";

vii) it is untrue that the Claimants were provided for in the financial resolution of Dr and Ms Cooper's divorce;

viii) Dr Cooper was a methodical and careful man who was an efficient record keeper.

21. DJ Goldberg ordered a trial of three preliminary issues on 1 June 2021; namely:

i) Whether Dr Cooper executed a will in accordance with the formalities of s.9 of the Wills Act 1837 on or about 27 March 2018; and, if so;

ii) What the contents of the 2018 will were;

[6] This is the sum about which Ms Chapman was cross-examined. Mr Rose suggested, in paragraph 46 of his skeleton argument, that the true figure was somewhat higher, in excess of £137,200 (which included payments relating to an Audi car which everyone seems to accept falls into Dr Cooper's estate). The precise figure does not matter. What is important is that it is the Claimants' case that Dr Cooper made significant lifetime gifts to Ms Chapman after March 2018.

iii) Whether, in the absence of an executed original of the 2018 will, the same should be presumed to have been destroyed by Dr Cooper with the intention of revoking it.

22. I am grateful to Mr Rose, and to Mr Elis Gomer who represented Ms Chapman, for all their help. Counsel were in complete agreement on the law.

23. I can conveniently deal with one matter now.

24. Both Mr and Mrs Hartley gave evidence that they both signed a document on about 27 March 2018. Having considered all the evidence, I reject the Claimants' contention that Mr and Mrs Hartley were not telling the truth when they said that they did both sign a document then, because:

i) it is improbable that a witness will perjure themself;

ii) it is even more improbable that two witnesses will perjure themselves in respect of the same evidence;

iii) it is highly improbable that two witnesses both innocently mis-recall the signing, by both of them, of the same document;

iv) there is no conceivable reason for Mr and Mrs Hartley to have consciously given fabricated evidence. They do not benefit in any way from Dr Cooper's estate.

This conclusion is reinforced by the conclusion I have reached about Mr and Mrs Hartley more generally; namely, that they were genuinely trying to tell the truth and to help me.

25. Taking this all into account, and as the parties' cases were presented, the resolution of the preliminary issues turns on the following principal disputes of fact:

i) Did Dr Cooper acknowledge to Mr and Mrs Hartley, when they were together, his signature on a document intended to be a will on about 27 March 2018?

ii) Was the document that Dr Cooper had signed, and Mr and Mrs Hartley then signed, the 2018 will (a draft of which is in evidence)?

iii) Did Mr and Mrs Hartley sign in Dr Cooper's presence?

iv) Is it correct, as Ms Chapman claims, that Dr Cooper did not thereafter destroy the 2018 will with the intention of revoking it?

26. I heard from Mrs Hartley, Mr Hartley and Ms Chapman. I also heard from Ms Cooper. The headmaster of Bolton School was due to give evidence but everyone agreed (at my encouragement) that his evidence would not assist me to resolve the preliminary issues. He was therefore not called to give evidence and I attach no weight to his witness statement (as Mr Rose properly accepted I should not in the circumstances).

<u>Mrs Hartley</u>

27. As I have said, Mr Hartley, Mrs Hartley's husband, is Ms Chapman's uncle. He is the brother of Ms Chapman's mother. Mrs Hartley gave the following evidence.

28. From time to time, she went with Mr Hartley to Ms Chapman's house to clean it and, when she did so, Mr Hartley worked in the garden. This they did when Ms Chapman's mother asked them to do so.

29. Dr Cooper and Ms Chapman attended Mrs Hartley's 60th birthday party in the middle of March 2018. During the party, Dr Cooper asked Mrs Hartley out of the blue whether she and Mr Hartley would act as witnesses to his will. She agreed, but they made no particular arrangement for when they would act as witnesses.

30. A little while later, Ms Chapman's mother asked Mrs and Mr Hartley to go to Ms Chapman's house to clean and to tidy the garden.

31. Mrs and Mr Hartley arrived at Ms Chapman's house by car a couple of weeks later. They parked on the driveway. Mr Hartley left the car first. He knocked on the front door. Mrs Hartley then got out of the car. Mr Hartley went back to the car to collect Mrs Hartley's cleaning equipment. Dr Cooper opened the front door. Mrs Hartley knew Ms Chapman and Dr Cooper were at home, because their car was also on the driveway. Once Mrs Hartley got to the front door, she stepped over the threshold. Ms Chapman was at the top of the stairs. Once Mrs Hartley stepped over the front door threshold, she was in an open plan room. She exchanged pleasantries with Dr Cooper. She cannot remember any discussion about a will. Dr Cooper then went into the lounge, and she followed, because the vestibule where they had been standing is small. Dr Cooper went to the dining table. Mr Hartley entered the house as Mrs Hartley went into the lounge, or as she was standing by the dining table when Dr Cooper was standing next to her. Dr Cooper had a pen in his hand. Mrs Hartley presumed that he wanted her to sign the will because he had only asked her a couple of weeks beforehand to do so. She took the pen he was holding. She cannot remember if he said anything at this point. She saw one document on the table. Dr Cooper gestured with his hand towards the document. Mrs Hartley does not know if Mr Hartley saw Dr Cooper gesture towards the document. She saw a signature on the document in Dr Cooper's name. She assumed that he had signed the document. She did not see Dr Cooper sign the document. The first thing she saw when looking at the document was a signature. She read the document as she signed it. She noticed that it was a last will and testament. She recalls that everything was left to Ms Chapman, that some money was left to a hospital and that some money was left to Bolton School. She asked Dr Cooper why he had made no testamentary provision for his children. He responded that they had been provided for in his divorce. Mr Hartley was in the room at the same time. Mr Hartley then signed the document. Mrs Hartley was in the room when he did so. Dr Cooper then picked up the document and headed towards the front door. Mrs Hartley did not see the document again on the dining table.

32. She thought she signed the 2018 will, the draft of which was shown to her in cross-examination, but she conceded that she could have signed a document which was slightly different.

33. Her involvement in the execution of the 2018 will has not been foremost in her mind. She has had to deal with more pressing family matters, including bereavements, and the Covid pandemic.

34. The evidence in Mrs Hartley's witness statement, which she confirmed in examination in chief she had recently read and was true, was different. She said there that she and Mr Hartley opened the front door and both said hello to Dr Cooper. After a brief chat, Dr Cooper asked her and Mr Hartley whether they would sign the will. She said that could not remember whether he signed a document in their presence or whether he had already signed that document. She said that Dr Cooper told them in outline about his testamentary provisions and that she read the document as he was explaining it.

Mr Hartley

35. Mr Hartley gave the following evidence.

36. On the occasion in issue, he and Mrs Hartley arrived at Ms Chapman's house by car. He was driving. He parked the car on the driveway. He knocked on the front door but, before it was opened, he returned to the car to collect Mrs Hartley's cleaning materials. As he returned to the car, Mrs Hartley got out of the car and moved towards the house. He did not see her enter the house. He returned to the house with Mrs Hartley's cleaning materials. He crossed the threshold into the small entrance vestibule and then went straight into the lounge to find Mrs Hartley and Dr Cooper at the bottom of the stairs close to the front door. Ms Chapman was at the top of the stairs. She was descending the stairs with bags. He put the cleaning materials on the ground in the lounge. (He had said in his witness statement that he put them down in the "front porch", which I understand to be the vestibule. In his witness statement, he also recalled two trips to bring in cleaning materials). Mrs Hartley and Dr Cooper were chatting. They were about five paces away from him. Dr Cooper approached him and asked him if he and Mrs Hartley were happy to sign his, Dr Cooper's, will whilst they were there. By now, Mrs Hartley had gone into the kitchen with her cleaning materials. Mrs Hartley then returned from the kitchen. Mr Hartley told her that Dr Cooper had asked them to sign his will whilst they were there. Dr Cooper was still in the room. Dr Cooper and Mr and Mrs Hartley walked towards the dining table. Dr Cooper then picked up a pen and gestured to Mrs Hartley to come closer to the dining table. He said that he had a pen and that the will was on the table. Mr Hartley saw a document on the table and there was also washing on the table. Dr Cooper was still holding the pen and passed it to Mrs Hartley who signed the document. At this point, Mr Hartley was standing on one side of Mrs Hartley and Dr Cooper was standing on her other side. Mr Hartley was then passed the pen by Mrs Hartley, and she stepped to one side, and he signed the document. There was no discussion about the contents of Dr Cooper's will before Mr Hartley had signed the document. Dr Cooper had already signed the document but Mr Hartley did not see Dr Cooper sign. Mrs Hartley then mentioned "the bit with the children". She "questioned him about the children". Dr Cooper responded that "proper legal documents" had been made for them in his divorce settlement. After Mr Hartley signed the document, Dr Cooper picked it up and headed towards the front door. Dr Cooper and Ms Chapman then left for a holiday in Morecombe about five minutes later.

37. Mr Rose cross-examined Mr Hartley about why he had said in his witness statement that Dr Cooper had begun to explain his testamentary dispositions before Mrs Hartley signed. Mr Hartley could not explain why he had said that.

Ms Chapman

38. Ms Chapman gave some evidence about how Dr Cooper approached the indirect contact he was entitled to have with the Claimants for some of the time after divorce proceedings were begun. He was permitted to write letters to the Claimants as a form of indirect contact. According to Ms Chapman, fearing that Ms Cooper might stop him writing to the Claimants, Dr Cooper had the content of his letters checked for appropriateness by Ms Chapman and by his community care worker, Donna Moody, before the letters were sent.

39. Ms Chapman also said that Dr Cooper understood that, during the divorce proceedings, Ms Cooper's new home was put in trust for the Claimants, and that the Claimants would also benefit from his occupational pension. It was on this basis, Ms Chapman said, that Dr Cooper believed that the Claimants had been provided for.

40. Ms Chapman gave the following evidence about the circumstances leading up to the making of the 2018 will and about its execution.

41. In about January 2018, Dr Cooper indicated that he was keen for him and Ms Chapman to have wills in place, in his case so that Ms Chapman was protected (and, according to her witness statement, so that his money was protected). Ms Chapman, her mother and her sister had all been diagnosed with cancer in a short period of time in 2017 and, whilst Ms Chapman's treatment ended at the end of 2017, her mother's treatment and her sister's treatment continued. The financial aspects of Ms Chapman's divorce were also resolved in January 2018. Dr Cooper mentioned "mirror wills". Ms Chapman had never felt the need to have a will and January is her busiest time of year at work. She told Dr Cooper that she did not have time to deal with the making of a will.

42. Dr Cooper drafted a will in the conservatory of Ms Chapman's house, which he told her was intended to be a temporary measure, and he showed her the draft in January 2018, and the same document was executed in March 2018. She said that she knows the January 2018 draft, the draft in evidence and the will as actually executed are the same document because of the reference in all of them to the exclusion of the Claimants from testamentary provision.

43. A few days before the 2018 will was executed, Dr Cooper printed off two copies of the draft will and put one (or both of them) on the dining table, where it (or they) stayed until Mr and Mrs Hartley visited and signed the will as witnesses. Ms Chapman saw the 2018 will before it was signed. She and Dr Cooper discussed his decision not to make any testamentary provision for the Claimants, about which Ms Chapman was upset.

44. Dr Cooper had told Ms Chapman, once they knew that Mr and Mrs Hartley would be visiting following Mrs Hartley's birthday party, that he was going to ask them to witness the will. (In her witness statement, Ms Chapman suggested that Dr Cooper in

fact reported that Mrs Hartley had agreed that she and Mr Hartley would act as witnesses).

45. On the occasion when Mr and Mrs Hartley acted as witnesses, Ms Chapman was putting belongings into the car for the trip to Morecombe. She was going up and down the stairs. She did hear Dr Cooper mention the will, but she did not see Mr and Mrs Hartley sign it. Ms Chapman and Dr Cooper had to leave for Morecombe shortly after. Dr Cooper put the 2018 will on the back seat of the car before he and Ms Chapman set off for Morecombe. (Ms Chapman did not mention this in her witness statement, and could not explain why she did not do so). When they returned from Morecombe, Dr Cooper put the 2018 will on the dining table. A couple of days later, Ms Chapman put the 2018 will in a basket in which Dr Cooper kept some of his belongings because the 2018 will was in the way on the dining table. Ms Chapman told Dr Cooper what she had done. She remembers seeing three signatures on the document.

46. Ms Chapman also gave the following evidence.

47. She remembered that the 2018 will made no provision for the Claimants, that the word "codicil" appeared in the text, and that it contained a gift to Bolton School and a gift to the Royal Manchester Children's Hospital.

48. She and Dr Cooper did not discuss the 2018 will after March 2018.

49. She acknowledged that Dr Cooper had been very organised and methodical, but she said that, in later years, he was less so. She recalled speaking with him on a FaceTime video call shortly before he died when he was in his flat in Bolton, when she saw him surrounded by documents. She added that he was in the process of sorting out his paperwork when he died.

50. After Dr Cooper's death, Ms Chapman discovered that the 2018 will was not in the basket. His laptop, an iPad and some syringes for prescription injections were in the basket. She did not search for the 2018 will.

51. She told her solicitors about the existence of the 2018 will within a couple of days of Dr Cooper's death. The solicitor she told was at the practice she continues to instruct but is not her current solicitor. Her original solicitor became ill and no longer works at the practice. (No solicitors' attendance notes have been disclosed).

52. I am compelled to approach Ms Chapman's evidence cautiously. The clear impression I formed during her cross-examination was that she was angry, entirely understandably, that Dr Cooper had died so suddenly and just as she and he were beginning to build a life together after both their marriages had failed, and she was visibly distressed when giving evidence about Dr Cooper's death. She was also visibly distressed during most of Ms Cooper's cross-examination and during counsels' closing submissions. However, she also appeared angry, from my observation, about how, from her perspective, Dr Cooper had been victimised in his divorce proceedings. By way of example, at one point in her cross-examination, she suggested that the Claimants, who were nine and seven years old at the time, had not told the truth during those divorce proceedings, even though they were mature enough to do so she believed. It is not for me to judge whether, in fact, young children are,

and particularly the Claimants then were, mature enough to tell the truth. What has caused me to pause though is that, when Ms Chapman was pressed to set out the circumstances in which the Claimants did not tell the truth in the divorce proceedings, she could not say what they had said. Rather, she said, Dr Cooper had reported to her that the Claimants had not told the truth in the divorce proceedings but had kept confidential what they had said which might not have been true, so that neither I nor, more importantly, Ms Chapman can assess whether or not the Claimants had, in fact, not told the truth. I have concluded, as a result, that Ms Chapman's objectivity as a witness is doubtful, influenced as she was by Dr Cooper who, as I have said, was, at times, a very ill man.

Ms Cooper

53. Ms Cooper could give little useful direct personal testimony, because, from January 2015 until Dr Cooper's death, she only engaged with him through lawyers or at court hearings. Nevertheless, she gave the following evidence.

54. Dr Cooper was a meticulous record-keeper. He was also technologically competent and took photographs of "things" and stored them electronically.

55. Dr Cooper had no contact at all with the Claimants from the day after he was discharged from hospital until July 2015. Thereafter, he had some indirect contact with them. He wrote them six letters but then stopped writing in the summer of 2016 because, following a hearing in the Family Court, he gave an undertaking which limited how he might have contact with the Claimants and he was worried that, if he continued to write to them, he might be in breach of his undertaking.

56. Perhaps because of his ill-health, Dr Cooper is likely to have thought that his divorce proceedings were acrimonious and vitriolic.

57. In the divorce proceedings, Dr Cooper did believe, wrongly as it turns out, that the Claimants had been nominated as beneficiaries of his Aviva life insurance policy.

58. By the time of his death, Dr Cooper weighed nine stone more than he had done in 2014. Ms Cooper did not say why this had happened (but see below). It is possible that Dr Cooper's weight had increased dramatically because he had lost interest in his physical health. It is equally possible that Dr Cooper's weight had increased, say, because of the medication he was prescribed or otherwise because of his mental ill-health.

59. Dr Cooper was a very different man after 2014 than he was before.

60. When Ms Cooper visited Dr Cooper's flat in Bolton after he died she found that the flat had been kept in a poor state and that Dr Cooper had been struggling to care for himself.

Discussion

61. Mr Rose was right to draw to my attention the presumptions which operate in this case, because they have helped me to correctly formulate the questions I have to answer (see above) and because the presumption of revocation which operates as a

result of the loss of the original 2018 will reminds me that testators tend to take care of their wills and keep them safe because they tend to appreciate that wills are important documents which may be required many years in the future. However, as Mr Rose also correctly reminded me, ultimately I have to consider all the evidence and the probabilities holistically and then determine whether, on balance, the 2018 will was duly executed and, if so, whether it was then revoked by destruction by Dr Cooper.

62. I have considered all the evidence (and all the submissions which were made). However, it is impractical in this judgment to refer to every piece of evidence and explain why I have attached some, or no, weight to it. Rather, in this judgment I set out my decision and explain why particular pieces of evidence have particularly weighed in my decision. I also explain why I attach no, or little, weight to certain evidence which was particularly relied on or to particular submissions which were made.

63. I have considered all the evidence holistically. In weighing the evidence in this case, it is not possible or appropriate to consider each piece of evidence separately. So, for example, the fact that the 2018 will was created in January 2018 and last saved in March 2018 corroborates Mr and Mrs Hartley's evidence, whilst, in turn, their evidence corroborates the conclusion that the document they signed in March 2018 was the 2018 will, and not a different document. However, inevitably, in this written judgment I am compelled to explain the reasons for my decision in a more linear way, piece of evidence by piece of evidence, even though, in reaching my decision, I have considered the evidence holistically.

64. In reaching my decision, I have had to ask myself what happened on the balance of probabilities (the civil standard of proof). It is not my function to reach a decision on the criminal standard of proof. The civil standard of proof allows for some uncertainty. That is a particularly important point to bear in mind because, in this case, there is limited documentary evidence, and because Mr Rose quite properly laid out a number of factual scenarios which are contrary to Ms Chapman's case which he said could have occurred (because of the paucity of evidence), which I cannot say beyond reasonable doubt did not occur but which I am satisfied are improbable. So, for example, Mr Rose said that it is possible that, if a will was duly executed in March 2018, it was a different one to the 2018 will, because the computer which was in Dr Cooper's possession in March 2018 is no longer available and because it does not appear that every computer file on it was transferred to the second computer the hard drive of which is available. I cannot say with certainty that the will executed in March 2018 was the 2018 will and not a different one, but I have concluded that it is improbable that it was a different one, because (1) there is no evidence of a different document, (2) the 2018 will was created only shortly before March 2018 and, more importantly, was saved only about a week before it was executed and (3) its terms have been almost accurately reported by at least one of Mr and Mrs Hartley.

65. With this introduction, I now set out my decision.

66. From my observation of them and considering the evidence, I found Mr and Mrs Hartley to be credible witnesses who were genuinely trying to tell the truth and to help me.

67. It is true that their oral evidence was not identical to their witness statements and that their oral evidence was not the same as each other's evidence.

68. Mr Hartley's witness statement was only marginally different to his oral evidence, and in unsurprising ways. One difference between his witness statement and his oral evidence was in the way he described Ms Chapman's house. That difference is unsurprising. Mr Hartley had difficulty in oral evidence in putting into words the layout of Ms Chapman's house. Another difference related to the number of trips he made to collect Mrs Hartley's cleaning materials from the car following their arrival at Ms Chapman's house, but this insignificant difference is irrelevant to the case. Mr Hartley never expected to be giving evidence in court, four years after the event, about what he is likely to have thought was the uncontroversial act of acting as a witness to Dr Cooper's will. It is unsurprising therefore that the retelling of the event orally was marginally different to the witness statement he made. When I asked Mr Hartley to recount for me, step by step, the events of the day in issue, he did so with what struck me as an air of authenticity.

69. Mrs Hartley's witness statement and oral evidence diverged to a greater extent but she provided a reasonable explanation for that; that her personal circumstances have meant that the events in issue have not been foremost in her mind.

70. Mrs Hartley's recounting of how Dr Cooper asked her to sign the 2018 will when she arrived at Ms Chapman's house, by signs rather than words, does seem unusual when there is no suggestion that Dr Cooper could not speak and when Mrs Hartley's own evidence is that she then did discuss the will contents with him. For this reason, and because her witness statement and oral evidence diverged more than Mr Hartley's evidence, I prefer his evidence to hers.

71. That Mrs and Mr Hartley's oral evidence diverged in the ways they did adds to, rather than detracts from, Mrs and Mr Hartley's authenticity. If they had collaborated in devising a story which was not what they actually recalled, it is probable that their evidence would have been the same.

72. Such documentary evidence as there is, and the probabilities, do tend to corroborate Mr Hartley's (and Mrs Hartley's) evidence.

73. The draft of the 2018 will was created in January 2018, as I have said. Ms Chapman says that that is when Dr Cooper discussed with her the making of wills. That is unsurprising, and he probably did. Ms Chapman's cancer treatment had only recently concluded, as had the financial aspects of her divorce proceedings. Dr Cooper had already begun to take steps to secure Ms Chapman's financial future if he died first, by beginning his occupational pension death benefit nomination form a few months before.

74. Dr Cooper did not feel that the making of his will was urgent, because on no account did he take steps to have a will duly executed for a couple of months. It is unsurprising therefore that he waited until Mrs Hartley's birthday party to ask if she and Mr Hartley would act as witnesses. It is improbable that Mrs Hartley mis-recalled the request, because it was an unusual one at a significant life event.

75. The draft of the 2018 will was last saved on 20 March 2018, a few days after the birthday party (so, consistently with Dr Cooper having made his request to Mrs Hartley then), and shortly before Mr and Mrs Hartley's visit to Ms Chapman's home. That the draft was then opened and saved (and no other document having been identified) has in part led me to conclude that it is probable that it was that document which was on the dining room table at the time of Mr and Mrs Hartley's visit. This conclusion is reinforced by the following matters.

76. The visit was only a few days before Dr Cooper considered the death benefit nomination form again, which, I have concluded, is most consistent with Dr Cooper wishing to make significant post-death provision for Ms Chapman, as the 2018 will does. In fact, by March 2018, Dr Cooper had probably concluded that Ms Chapman was to benefit from his estate and enjoy the occupational pension death benefit if he died first, otherwise Dr Cooper would not have made any will in March 2018 or would have completed the death benefit nomination form in favour of someone else in April 2018.

77. Dr Cooper was a very educated man, a teacher and someone who is likely to have placed a premium on good spelling and grammar. There are obvious typographical errors in the 2018 will, and I have weighed the fact of those errors in the balance before reaching my decision. I attach less weight to those errors than Mr Rose invited me to do, because, following the onset of his mental ill-health, there is evidence that Dr Cooper mis-spelled a simple word.

78. Much was made on the Claimants' behalf about Dr Cooper's behaviour before he became ill. It is said that he was a meticulous record-keeper, that he had a longstanding wish to be cremated and that he is unlikely to have made a home-made will. However, I place little weight on these matters. By all accounts Dr Cooper changed following his ill-health and his divorce. Even Ms Cooper accepts that he was a very different man. She goes further and says that he was struggling to care for himself. Ms Chapman concurs that he was not a meticulous record-keeper towards the end of his life. There is also evidence, from Ms Chapman, that he involved others in the decisions he made, such as the contents of letters to the Claimants. It is not surprising therefore that he left the decision about how his body was to be disposed of to Ms Chapman.

79. It is odd that the 2018 will says that Dr Cooper settled the financial aspects of his divorce ("that arrangement") with the 2018 will ("this") "in mind". It would make more sense if the 2018 will had said that Dr Cooper made "this arrangement" (the 2018 will) with "that" (the financial aspects of the divorce) "in mind". I have weighed that oddity in the balance, but on the basis that is equally probable that the oddity is due to a typographical error as to something more significant.

80. It is probable that Dr Cooper decided to make no testamentary provision for the Claimants because he had grown estranged from them (through no fault of their own), because he wrongly thought that provision had been made for them in his divorce and because he wanted to make significant testamentary provision for Ms Chapman. In reaching this conclusion, amongst other matters I have taken into account that, by 2018, Dr Cooper had had no direct contact with the Claimants for three years and only limited indirect contact with them for a shorter period of time. By 2018, he was barred from all contact with them. He knew that they had some financial security because of

Ms Cooper's compensation award and he wrongly believed that they were the beneficiaries of his Aviva life insurance policy, and so provided for in his divorce.

81. Ms Cooper and the Claimants suggest that it was cruel for Dr Cooper to make no testamentary provision for the Claimants but to make testamentary provision for the Royal Manchester Children's Hospital. There is no requirement, of course, for testamentary dispositions to be fair or just. It is understandable, and reinforces Ms Chapman's case, for Dr Cooper to have made provision for the hospital, having concluded that he would make no provision for the Claimants. The hospital had cared for the First Claimant when she was born and it is probable that Dr Cooper was grateful to it for that care and any support given to the family.

82. I place little weight on the Claimants' point that Dr Cooper is unlikely to have made an unrestricted gift to Bolton School. The gift to the school is small. It is unlikely that Dr Cooper would have given it the degree of thought that the Claimants suggest he is likely to have done.

83. That Mrs Hartley does not accurately recall the terms of the gift to the school in the 2018 will is insignificant, contrary to the Claimants' suggestion. I have already explained why it is unlikely that she would remember the precise terms of a document (the 2018 will) she saw on a single occasion for a few minutes.

84. I attach no weight to the complaints that Ms Chapman's solicitors did not mention the 2018 will for a couple of months after Dr Cooper's death and that Mrs and Mr Hartley's witness statements were provided later than they could have been. There are perfectly credible explanations for the delays, including changes in solicitors acting. The complaints, if made out, would call into question Mrs and Mr Hartley's honesty. As I have explained, I reject the suggestion that, when giving evidence, they were doing anything other than genuinely trying to tell the truth.

85. For all these reasons, I have concluded that the document which Mr and Mrs Hartley signed on about 27 March 2018 was the 2018 will, and I accept Mr Hartley's oral evidence of the events of that day.

86. Theobald on Wills (19th ed) explains the acknowledgment requirement in s.9 of the Wills Act 1837 thus:

> "Where the will is not signed by the testator (or by another on his behalf) in the presence of the attesting witnesses, the testator may acknowledge a previously written signature to such witnesses present at the same time.
>
> As to what constitutes acknowledgment, in *Hudson v. Parker* Dr Lushington said:
>
>> "…acknowledgment may be expressed in words that will adequately convey that idea, if the signature be proved to have been then existent; no particular form of expression is required either by the word "acknowledge" or by the exigency of the act to be done. It would be quite sufficient to say "that is my will," the signature being there and seen at

> the time, for such words do import an owning thereof; indeed, it may be done by any other words which naturally include within their true meaning acknowledgment and approbation."

Sir H J Fust went further in *Re Thomson* where he said:

> "When a paper is produced by a testator to the witnesses, with his name signed thereto, and they have an opportunity of seeing his name, and they attest the same by subscribing the paper, they being present at the same time, this is a sufficient acknowledgment of his signature by the testator."

Cotton LJ stated in *Daintree & Butcher v. Fasculo* that:

> "Now it is admitted law that it is not necessary for the testator to say "this is my signature," but if it is placed so that the witnesses can see it, and what takes place involves an acknowledgment by the testator that the signature is his, that is enough. In my opinion, when the paper bearing the signature of the testatrix was put before two persons who were asked by her or in her presence to sign as witnesses that was an acknowledgment of the signature by her. The signature being so placed that they could see it, whether they actually did see it or not, she was in fact asking them to attest that signature as hers."

Thus, the witnesses need not be told that the document is a will. Perhaps they may even be deceived by the testator into believing that the document is a deed. Further, it is not necessary that a witness is aware that a testator had to acknowledge his signature in order for the will to be valid; it is enough that the witness intended to and did sign a will as a witness having heard or seen the words and deeds which contributed the testator's acknowledgment of his signature. However, as noted above, there cannot be a valid acknowledgment unless the witnesses at the time of the alleged acknowledgment saw the signature or had the opportunity of seeing it.

For a signature to be acknowledged, it must, therefore, already be on the will. While it is not essential that there should be positive evidence that the testator's signature was on the document before acknowledgment, the court must be satisfied that it was, in fact, there. Where positive evidence is lacking the court must have regard to all the circumstances.

The testator may acknowledge his signature by means of gestures. As little as a nod of the head has been held sufficient.

> If the witnesses are asked to sign the document by some person in the presence and hearing of the testator, and see or have an opportunity of seeing the signature, that is a valid acknowledgment by the testator though he himself speaks no word; for the request of another in the presence of the testator may be regarded as the equivalent of a request by the testator himself. Similarly it has been said in an Irish case that if a silent testator whose signature is physically visible to himself and the witnesses has the will brought in and can see and acquiesce in their action of signing the will as his witnesses from his point of view that is an acknowledgment that it is his signature."

87. Taking into account all I have said, I have reached the following conclusions:

    i) Dr Cooper signed the 2018 will (the draft of which is in evidence) on about 27 March 2018;

    ii) By the location of the signature on the document, reinforced by Dr Cooper's conduct in March 2018 to the extent that I am permitted to take that conduct into account, Dr Cooper intended his signature to give effect to the 2018 will as his will;

    iii) Dr Cooper acknowledged his signature in Mr and Mrs Hartley's presence when they were present at the same time;

    iv) Mrs Hartley attested and signed the 2018 will in the presence of Dr Cooper (and Mr Hartley);

    v) Mr Hartley then attested and signed the 2018 will in the presence of Dr Cooper (and Mrs Hartley);

    vi) The 2018 will was executed in accordance with s. 9 of the Wills Act 1837.

88. I now consider whether the 2018 will was revoked by destruction.

89. Mr Rose pointed out that Dr Cooper did not expect to die in July 2019. Rather, it is reasonable to suppose, he expected to live to old age. In consequence, Mr Rose argued, Dr Cooper could have been expected to take care of the 2018 will. Mr Rose also argued that, because the 2018 will is lost, I should therefore conclude that Dr Cooper destroyed it with the intention of revoking it. There is force in Mr Rose's point that Dr Cooper could have been expected to take care of the 2018 will, which I take into account, and which reflects the presumption of revocation by destruction which operates in this case. However, for the following reasons I have concluded that it is improbable that Dr Cooper destroyed the 2018 will with the intention of revoking it. Rather, most probably, he did not have any intention of revoking the 2018 will.

90. I have already commented on Dr Cooper's lifestyle in the last years of his life. The impression I have formed is that there was a degree of chaos in his life, because of his ill-health and because he was spending part of his time in his Bolton flat and part of his time in Ms Chapman's home. Dr Cooper is unlikely therefore to have taken as much care with the 2018 will as many other testators do with their wills.

91. I have also concluded that Dr Cooper probably had a continuing wish to make significant testamentary provision for Ms Chapman, so that it is improbable that he intended to revoke the 2018 will otherwise than by making a new will. I have already concluded that Dr Cooper wished to make significant testamentary provision for Ms Chapman in March/April 2018. Dr Cooper's gifts to her afterwards of large amounts of money tend to support the conclusion that he had a continuing wish to make significant provision for her. Mr Rose suggested that those gifts tend to support the conclusion that Dr Cooper destroyed the 2018 will, having concluded that he had fully benefited Ms Chapman during his lifetime. Mr Rose's point may have been a good one if there was evidence that Dr Cooper's relationship with Ms Chapman had deteriorated after March 2018, if there was evidence that his relationship with the Claimants had improved, or if there was evidence that he began to think of the Claimants more favourably than he had done in March 2018, but there is no such evidence.

92. Mr Rose may have suggested that the lifetime gifts Dr Cooper made to Ms Chapman made him financially vulnerable and so likely to want to revoke the 2018 will. It is right that Dr Cooper may have been financially vulnerable by the time he died, but, as I have indicated, in the circumstances of this case that tends to support the conclusion that he did not revoke the 2018 will. I confess that I do not follow how Dr Cooper's financial vulnerability, if any, means that it is likely he revoked the 2018 will. Broadly, a will deals with a testator's estate as it is when they die. If they then have no estate because they have given it away during their lifetime, they will have nothing to give by will. A revocation by Dr Cooper of the 2018 will would not have made him less, or more, financially vulnerable.

93. If Dr Cooper revoked his will by destruction, rather than by making a new will, his gift to Bolton School and the significant alternative provision in the 2018 will for the Royal Manchester Children's Hospital would have failed. I have concluded, on the evidence, that, after March 2018, Dr Cooper continued to prefer to favour them over the Claimants, because nothing apparently occurred after March 2018 to change the perspective which Dr Cooper had in March 2018, so reinforcing the conclusion I have reached, that Dr Cooper probably continued to want to make significant testamentary provision for Ms Chapman and did not intend to revoke the 2018 will.

94. Before reaching this conclusion I considered the points raised in opposition on the Claimants' behalf. I have effectively commented on most of them. I will now comment on the others.

95. I accept that Dr Cooper intended the 2018 will to be a temporary measure and that he did not apparently refer to it after March 2018. Neither of these matters undermine the conclusion I have reached. Dr Cooper was willing to make the 2018 will alone in March 2018 even though the obstacle to Ms Chapman making her own will had ended. Dr Cooper is likely to have appreciated that he was making the 2018 will at a time when Ms Chapman could, but chose not to, make her own will. However, Ms Chapman's continuing decision not to make her own will did not stop Dr Cooper making the 2018 will. He might have seen it as a temporary will but I think that it is unlikely that he saw it as a will which was conditional on Ms Chapman making her own will. Rather, he is likely to have seen the 2018 will as a will which was to remain in place temporarily until he could have a will professionally drafted. This reinforces the point that Dr Cooper wanted to make testamentary provision for Ms Chapman

effectively come what may. I attach no weight to the fact that Dr Cooper did not then make a later will or refer to the 2018 will after it was made. It is just as probable as any other possibility that, because of Dr Cooper's lifestyle and ill-health, over time he forgot about the 2018 will and his wish to have a professionally drafted will.

96. I accept that Ms Chapman did tell Dr Cooper that she was upset that he had made no testamentary provision for the Claimants. However, that did not stop Dr Cooper from making no provision for them in the 2018 will and there is no evidence either that Ms Chapman sought to change Dr Cooper's mind later on or that Dr Cooper's views about the Claimants changed later on. That Ms Chapman did tell Dr Cooper that she was upset that he had made no testamentary provision for the Claimants at the time he made the 2018 will is no indicator of whether he did, or did not, thereafter revoke the will.

97. I have therefore concluded that Dr Cooper did not destroy the 2018 will with the intention of revoking it.

Disposal

98. The answers to the preliminary issues are therefore as follows:

    i) Dr Cooper executed a will in accordance with the formalities of s.9 of the Wills Act 1837 on or about 27 March 2018;

    ii) The will was in the terms of the draft of the 2018 will which is in evidence;

    iii) In the absence of an executed original of the 2018 will, the same should not be presumed to have been destroyed by Dr Cooper with the intention of revoking it.

99. I cannot conclude this judgment without repeating that this is a sad case. Dr Cooper was a victim of significant ill-health, which contributed to the breakdown of what had been a long marriage, the loss of contact with his children, the Claimants, and the loss of a career which he apparently loved. Ms Cooper is a victim of the consequences of Dr Cooper's ill-health. The Claimants were young children when Dr Cooper became ill and when he died. They witnessed Dr Cooper's ill-health at a young age and they effectively lost their father in 2015 and then again in 2019. They are very much victims of Dr Cooper's ill-health. Ms Chapman too is a victim. She lost her partner whom she clearly loved in the most tragic of circumstances. During the trial both Ms Chapman and Ms Cooper had to relive distressing events. As a result of my decision, the claim will continue and I fear that, unless there is an alternative resolution to the continuing disputes between the parties, Ms Chapman and Ms Cooper may have to relive distressing events again.