

**Neutral Citation Number: [2023] EWHC 1983 (Ch)**

**Case No: PT-2020-BHM-000127**

**IN THE HIGH COURT OF JUSTICE AT BIRMINGHAM**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY**  
**TRUSTS AND PROBATE (ChD)**

Birmingham Civil And Family Justice Centre  
Priory Courts  
33 Bull Street  
Birmingham  
B4 6DS

BEFORE:

**HIS HONOUR JUDGE RICHARD WILLIAMS**  
sitting as a Judge of the High Court

BETWEEN:

<b>PETER WILKINSON</b>	<b>(1) <u>CLAIMANT</u></b>
<b>JAMES BOWIE</b>	<b>(2) <u>CLAIMANT</u></b>
<b>ADRIAN ROBERT WESTON MBE</b>	<b>(3) <u>CLAIMANT</u></b>

- and -

<b>JESSICA HICKEN</b>	<b><u>DEFENDANT</u></b>
-----------------------	-------------------------

**Legal Representation**

Mr Angus Burden (instructed by Freeths LLP) on behalf of the Claimants  
Mrs Jessica Hicken, the Defendant, appeared in person

**Judgment**

(Hearing dates: 9 and 18 May 2023. Judgment delivered orally. This transcript has been approved by the Judge.)

**His Honour Judge Williams:**

**Introduction**

1. This is my judgment following the trial on written evidence for a declaration in solemn form that the last will of Norman Walter Gill dated 15 February 2018 (“*the Will*”) is valid.
2. For ease of reference and with no disrespect intended, I shall, in the course of this judgment, refer to family members by their first names.

**Background**

3. By way of general background, I refer to and adopt the very detailed chronology prepared on behalf of the Claimants, who are the Trustees of the Norman Gill Charitable Trust (“*the Charitable Trust*”), which was established on 16 September 1992 and is the residuary beneficiary under the Will. The primary stated purpose of the Charitable Trust is to benefit the people of the city and county of Leicester.
4. By way of specific background, Norman was born on 24 January 1935.
5. In 1964, Norman married Mary and they had three children together:
  - a. Jessica, who is the named Defendant in these proceedings, born on 16 December 1964;
  - b. Marcus, born on 23 January 1966; and
  - c. Elizabeth, born on 17 March 1968.

Mary had a son, Julian, from a previous relationship. Julian was born on 18 December 1960.

6. Neither Marcus nor Elizabeth have children. Jessica has two children, Natasha, born on 1 December 1995, and Tom, born on 19 April 2006. Julian has a son, Harry, born on 13 April 1995.
7. Norman was a successful and driven businessman, but, in 1979, he was charged with and pleaded guilty to conspiring to murder Mary. Rather than being sent to prison, Norman was made the subject of a Hospital Order, pursuant to section 60 of the Mental Health Act 1959. The order expired on 6 July 1980. By way of context, on 15 December 1980, the treating consultant, Dr Curson, wrote a letter in support of Norman’s application for a shotgun licence. Dr Curson stated as follows:

“I first examine[d] Mr Norman Gill at St Andrews Hospital Northampton on 11 April 1979, when he was referred for psychiatric opinion, in the context of being charged for soliciting others to murder his wife. He was subsequently admitted to St Andrews Hospital and had already received extensive treatment, when he appeared before Leicester Crown Court where he was based on section 60 treatment order under the Mental Health Act, 1959. He was examined by three other consultant psychiatrists and there was general agreement that he had suffered from a significant psychiatric disturbance which was accepted as mitigation by the court.

His principal problems at that time might be summarised as follows. Mr Gill was an ambitious, energetic and at times ruthless man, who could also be oversensitive, emotional and prone to jealousy. A combination of personality, the deaths of his father and close friend, depression of mood, marital difficulties, failure in business, alcohol dependence and drug abuse led to a paranoid state of a psychotic nature, which principally manifested itself as a morbid jealousy syndrome. By the time of his court appearance, he had already responded satisfactorily to treatment and it was accepted that the constellation of emotional, behavioural and social circumstances was so unlikely to recur, that such an offence would not be repeated. He remained an inpatient for several more months..... and

then continue[d] treatment [as a] day patient, and finally as an outpatient. Since then, he has remained totally abstinent from alcohol and drugs, pursued his business interests successfully, readjusted his total lifestyle and successfully cope[d] with numerous legal problems related to his divorce proceedings.

In my opinion, Mr Gill is a fit person to hold a shotgun licence. His motive for doing so is consistent with the development of healthy outside leisure interests which were always part of his rehabilitation programme.”

8. Norman was able successfully to rebuild his wealth, primarily through a property and investment company, Whitehall Industrial Securities Limited (“*WISL*”).
9. Norman had no or no significant relationship with Julian from at the latest 2009 and, after which time, Julian was excluded from any of Norman’s wills.
10. On 8 May 2009, Norman wrote to Elizabeth in the following terms:

“Since Easter I have given much thought to your strategy of avoidance of me over the past three/four years..... so I shall ask Martin to provide payment of £10,762.32..... regardless of the consequential tax, I will also ask him to get and send appropriate forms for you to pay your own endowment....

Finally, I will inform, instruct my remaining family/executors that your presence will not be expected/allowed at my funeral.”

11. On 8 September 2010, Norman established a discretionary trust known as the Gill Welfare Family Trust (“*the Family Trust*”), of which Jessica and Marcus and their issue, but not Elizabeth or Julian or their issue, were named as discretionary beneficiaries. The trust period was for 125 years. Later that month, Norman executed a will leaving his residuary estate, which he then anticipated would be worth approximately £2 million to the Family Trust. The accompanying memorandum of wishes addressed to the trustees of the Family Trust stated Norman’s wish that the Family Trust be used for the purposes of education, medical care and welfare of the beneficiaries.
12. On 12 August 2013, Norman wrote to Marcus and his wife in the following terms:

“It is now over two weeks since you put the phone down during our discussion..... I now realise how much you resented me..... and since Tuesday have made no effort to re-connect but chose to phone Jess/ Rob on Saturday to inform them that neither you or Helen would be visiting as arranged..... so I have to assume that your side-stepping, Svengali responses now and in the past are a clear indication of how little, if at all, you value me/ family.

I am prompted to write by way of making my position and feelings clear as the Exeter saga has shown me how fragile my ‘family’ situation was/is with you..... unlike me you have been fortunate to live through a

period incorporating what is called 'Dad's Bank' as without it all you would almost certainly be operating on lower platforms.

Your attempts to muffle/ justify your anti-family behaviour towards me when the combined breakdown of both my business interests and my 1964 marriage/family exploded in 1979 will be truthfully detailed in my 1907-2014 biography when research, ghost writing and printing should all be completed."

13. By letter date of 17 August 2013, Marcus responded as follows:

"Thank you for your letter of 12/08/2013.

I am saddened to learn that you no longer consider it worthwhile to maintain an ongoing relationship with me, seemingly on the basis that I do not enjoy a level of contact with one of my three siblings that you deem appropriate. I feel that this is indicative of the lack of value which you ascribe to me, as an individual, and to the relationship we had. However, I shall of course respect your decision and it therefore only remains for me to thank you for past assistance, to wish you well for your twilight retirement and to offer my congratulations on having given up smoking."

14. By letter dated 28 November 2013, Norman wrote to Jessica and her husband Robert in the following terms:

"Following Wednesday's telephone discussion, I have to admit you have won the 'Battle' to preclude me from visiting Exeter..... I have made other arrangements which will not be inconvenient to anyone, I'm not only hurt and disappointed but very, very, offended, so I am informing you that you've lost the 'War' in that I have now terminated our one-sided relationship, I say this as for many years I have aided you financially and been supportive about your medical/educational/ transport and domestic problems.

With regard to the Family Welfare Trust, this has now being scrapped and my will is being adjusted to exclude all four (difficult to say children at your ages) of you as I feel I have subscribed enough to getting you all a degree of security and reasonable lifestyles appropriate to your abilities/inabilities..... With regards future communication, there will be no personal contact by yourselves or intermediaries, I do not, I repeat, do not want anything written, emails or telephoning to me or Martin as if necessary I will use BT 'choose to refuse' service and then if necessary I will involve my solicitors."

15. Enclosed in the same envelope, albeit dated 29 November 2013 was a second letter, which stated as follows:

"The attached, self explanatory, letter was drafted by me yesterday, it wasn't sent as Martin had the day at Links Lodge however, since talking to Robert, I've decided to suspend my proposed termination of our relationship with the proviso that from now on our only communication

will be between me and Robert who may in my opinion be continuing to father both your children out of fatherly love and concern for his son Tom, you know that I find your separate finance and input accounting to be odd as it's usually used by unmarried mistrusting couples as a cautionary precursor to separation.

I shall continue to alter my will and scrap the Family Welfare Trust which needed to be altered perforce the Marcus/Helen situation, I could say that you should seek professional help to make you appreciate and alter your disposition including your preference for little or no adult socialising but I would guess that you outsmart folk especially by dropping back to the pre and post 1979 saga however regardless of fault/blame I and many like me have overcome such traumas, in your case for example you with child subscribed to a much more personal/emotional trauma with the Steve saga, so for everyone's sake stop trying to score/win all matters to justify what suits you."

16. Therefore, as evidenced by the above quoted correspondence, by the end of 2013, Norman's relationship with all his children had effectively broken down, and Norman had made it clear that he wanted no more direct contact with any of them.
17. Norman executed a will dated 22 April 2015 ("*the 2015 Will*"). Despite the breakdown in relations and his earlier threats, Norman did not disinherit his immediate family in that the 2015 Will provided inter alia:
  - a. pecuniary legacies of £175,000 each to –
    - i. Jessica, Marcus, their respective spouses, and Elizabeth,
    - ii. the grandchildren, Natasha, Tom and Harry;
  - b. additional pecuniary legacies including to Norman's assistants, friends and associates; and
  - c. the residuary estate, estimated at £1.4 million, to the trustees of the Family Trust.
18. In 2016 and 2017, Norman sought to re-establish a relationship with Marcus and Jessica. As a result, Norman met Marcus for lunch on 13 October 2016, but thereafter Marcus failed to respond to Norman's letters and emails. There was correspondence passing between Norman and Jessica over several months, until by email dated 1 October 2017, Jessica asked Norman to cease all communication with her and her family. I will return to that correspondence in more detail later in this judgment.
19. On 15 February 2018, Norman executed the Will. He gave £5,000 to each of his children, but nothing to any of his grandchildren. He gave substantial pecuniary legacies to extended family members, friends, assistants, associates and carers totalling some £2 million. The residuary estate, estimated at £4 million, was left to the Charitable Trust.

20. On 30 March 2018, Norman suffered a stroke and died. His net estate has been valued at some £5.3 million.
21. Marcus and Elizabeth irrevocably admitted the validity of the Will by a settlement deed dated 2 December 2020, albeit expressing their intentions and preserving their rights to pursue claims against the estate under the Inheritance (Provision for Family and Dependants) Act 1975.
22. The present proceedings were issued on 8 December 2020.
23. Jessica's defence and counterclaim was dated the 5 February 2021. It was Jessica's case that the true last will of Norman was the 2015 Will, since Norman lacked testamentary capacity in respect of and/or did not know and approve of the Will. The pleaded particulars are extensive, but in summary it was alleged that:
  - a. the Will was not rational by excluding or significantly excluding the children and grandchildren, thereby disregarding the natural affection for close family and inconsistent with a pattern over 30 years of executing wills, leaving the majority of his estate to his children and grandchildren;
  - b. Norman suffered a personality disorder diagnosed in 1979 and which poisoned the natural affection for his children and grandchildren;
  - c. at the time he executed the Will, Norman was 84 and terminally ill with colon cancer. He also suffered with heart failure, sleep disorder and frailty. These medical conditions, together with the associated considerable amount of prescribed medication, all significantly adversely impacted upon Norman's decision making; and
  - d. the Will drafter, Mark Dunkley, failed to take proper instructions and failed to ensure any or any adequate safeguards were in place so that Norman properly understood the provisions made for in the Will and in particular in relation to his residuary estate.
24. By order dated 28 October 2021, notice of the proceedings pursuant Civil Procedure Rule 19.8A was given to other persons who may be affected by the claim, but none have chosen to become parties, and as a result they will be bound by this judgment.
25. In anticipation of a proposed mediation, the Claimants obtained a medical report from a consultant old age psychiatrist, Dr Series, dated 10 January 2022. In that report, Dr Series concluded that Norman was not suffering from any mental disorder or mental illness which might have affected his testamentary decisions. In particular, Dr Series did not consider it likely that Norman suffered from a personality disorder. In addition, on balance, Norman had testamentary capacity at all relevant times.
26. The mediation was successful and the parties entered into a settlement agreement on 4 February 2022, whereby Jessica irrevocably and unconditionally accepted the validity of the Will and the Claimants agreed to pay Jessica the total sum of £700,000, free from inheritance tax from the residuary estate. The agreement was expressed to be conditional upon the court propounding the Will in solemn form.

27. By order dated 13 August 2022 and in light of the settlement agreement, District Judge Singh directed that the matter be listed for trial on written evidence, pursuant to paragraph 6.1 of Practice Direction 57. The Claimants were given permission to rely upon Dr Series' report and were directed to file and serve all witness statements of fact and any relevant documents by the 4pm on 30 September 2022.
28. Jessica applied to set aside the order of District Judge Singh and sought directions to enable her to put in expert and factual evidence challenging the validity of the Will. At the hearing of the application before HHJ Rawlings, it was conceded on behalf of Jessica that, in light of the settlement agreement, she was prohibited from putting in evidence challenging the validity of the Will. It was nevertheless submitted that Jessica ought still to be allowed to rely at trial upon relevant evidence, which had not been provided to Dr Series, and which, therefore, cast doubt upon the reliability of his expressed opinions.
29. HHJ Rawlings dismissed the application, but granted permission to Jessica to write to Dr Series highlighting those parts of his report, which allegedly contained factual errors and inviting Dr Series to revisit his opinions, if and to the extent that he accepted that he had made any such errors. Jessica's resulting letter is dated 23 January 2023, in which she highlighted essentially three alleged factual errors:
  - a. Firstly, Dr Series' statement that Norman's historic wills consistently include a provision for charity;
  - b. Secondly, Dr Series' statement that in addition to benefiting the Charitable Trust, Norman also consistently included testamentary provision for other charities which had charitable aims of benefiting the Leicestershire area; and
  - c. Thirdly, Dr Series' statement that Norman departed from this pattern of charitable will making in 2010 and 2015 by leaving his residuary estate to the Family Trust.
30. In his response dated 15 February 2023, Dr Series concluded that even if the matters raised by Jessica were accurate, and there was no agreement that they were accurate, they would not change his previously expressed opinion, which was based, to a considerable extent, on the medical records and the nature and quality of the correspondence in the various solicitors' will files.
31. In addition to the written evidence of Dr Series, the Claimants rely upon the following witness statements in support of the declaration sought:
  - a. Firstly, the witness statement of Mark Dunkley. He was Norman's longstanding solicitor and friend, who drafted the Will and many of Norman's earlier wills. He was also present when the Will was executed and explained the contents to him;
  - b. Secondly, the witness statements of Nicola Leeson, who is a legal executive and was a witness to the Will. She confirms due execution;

- c. Thirdly, the witness statement of Mr Adrian Weston, who was Norman's long term friend, a trustee of the Charitable Trust and a director of Norman's company, WISL;
  - d. Fourthly, the witness statement of Mr Pathmanathan, a cardiologist who had treated Norman since 2014. He confirms that Norman was mentally very sharp and wanted to understand his illness as fully as possible. Norman's mental capacity was never in question throughout the time he knew him, right up until Norman's death; and
  - e. Fifthly, the witness statement of Amy Atkins, the daughter of one of Norman's friends, and who saw Norman regularly over the years, including a couple of months before he died. She noticed no difference in Norman's personality or behaviour, even after he had been diagnosed with cancer.
32. In light of the terms of the settlement agreement, Jessica has not put in any contrary expert or factual witness evidence.

### **Applicable legal framework**

#### testamentary capacity

33. The test for whether a testator has sufficient testamentary capacity to execute a will remains that set out in **Banks v Goodfellow** (1870) LR 5 QB 549. In order to satisfy that test:
- a. Norman must have been able to understand the nature of the act of making the Will and its effect;
  - b. Norman must have been able to understand the extent of the property of which he was disposing;
  - c. Norman must have been able to comprehend and appreciate the claims to which he ought to give effect; and
  - d. Norman must not have been subject to any "disorder of the mind [as] shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties, that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made."
34. Capacity must be considered in relation to the particular transaction, its nature and complexity.
35. The burden of proof in relation to testamentary capacity is subject to the following rules:
- a. Firstly, whilst the burden of proof is upon the person propounding the will to establish testamentary capacity, where the will is duly executed and appears rational on its face, then the court will presume capacity;



- b. Secondly, in such a case the evidential burden then shifts to the objector to raise a real doubt about capacity; and
- c. Thirdly, if a real doubt is raised, the evidential burden then shifts back to the propounder to establish testamentary capacity, nonetheless.

(see *Theobald on Wills* 19<sup>th</sup> Ed at 4-020)

#### knowledge and approval

36. Whereas testamentary capacity includes the ability to make choices, knowledge and approval requires no more than the ability to understand and approve choices that have already been made. In other words, the testator must understand what is in the will when they signed it and what its affect would be – *Gill v Woodall* [2011] Ch 380.
37. As with testamentary capacity, due execution of an apparently rational will, will ordinarily satisfy the burden of proof on the propounder to establish knowledge and approval, unless there are circumstances which excite the suspicion of the court, in which case the propounder will be required to allay those suspicions by positively proving knowledge and approval – *Fuller v Strum* [2002] 1 WLR 1097.
38. Further, where a will has been properly executed after being prepared by a solicitor and read over to the testator, as in the present case, this then raises a very strong presumption that it represents the testator’s intentions at the time they execute the will – *Gill v Woodall*.

#### **Jessica’s submissions**

39. Jessica, who represented herself with the assistance of her husband, Robert, attended the hearing and made submissions, primarily that the report of Dr Series is misleading, since he was not provided with all the documents that he should have been.
40. In particular, Dr Series was not provided with copies of the communications between Norman and his children in 2013, which evidenced that he was already estranged from them when he executed the 2015 Will, and which still made significant provision for his children, including leaving the residuary estate to the Family Trust. Dr Series was therefore wrong to have stated that Norman’s relationship with his children deteriorated after the 2015 Will.
41. Further, Dr Series considered Jessica’s email of 1 October 2017 out of context and he was not provided with copies of the significant communications between her and Norman in 2016 and 2017. Again, Dr Series was wrong to state that Jessica’s email of 1 October 2017 supported Norman’s view that the breach was of the children’s making. That correspondence was also relevant to the issue of whether or not Norman had a personality disorder. Jessica urged me to read that correspondence carefully before making my decision.
42. Finally, Dr Series did not read Mr Weston’s witness statement which contains highly relevant information, including the fact that Norman lacked empathy and found it

very difficult to believe he was responsible for the breakdown in the relationship with his children.

43. It was submitted on behalf of the Claimants that as a result of Jessica having irrevocably and unconditionally accepted the validity of the Will, I ought to disregard Jessica's submissions. Ultimately, the issue as to testamentary capacity is a decision for the Court and is not to be delegated to experts. For that reason, I have taken into account Jessica's submissions and read the correspondence she relies upon, which she says goes to the issue of what weight, if any, I ought to attach to Dr Series' evidence.

#### **Correspondence passing between Norman and Jessica**

44. I am unable in course of this judgment to refer to all the correspondence, but I have selected the following extracts, which I consider to be sufficiently illustrative.

45. On 15 March 2016, Norman's newly appointed PA, Alan, who had replaced Martin, wrote to Jessica and Robert in the following terms:

“Last year Norman started the research necessary for his autobiography ..... and ..... he decided to do the enclosed family tree .... which hopefully you will find interesting.

Your acknowledgement (s.a.e enclosed) would be appreciated together with requested info; Telephone Numbers/Email & Postal Addresses, as it would seem that I will need to contact you again in the not too distant future.”

46. Following a chaser email on 7 April 2016, Jessica responded to Alan as follows on 8 April 2016:

“The last communication we had from Norman was that any contact to him, even through Martin would result in legal action. Your communication therefore seems inappropriate without proper explanation.”

47. On 26 April 2016, Norman wrote to Jessica and Robert as follows:

“Am prompted to write as it was your email reply to Alan that is inappropriate in accordance with enclosed 'private' copies, maybe your intelligence/abilities are starting to lean towards your other parent, I hope not as you should have many years of responsibility to come.

For myself I was hoping that our two years stand-off would generate more consideration and respect for me/my position, however, as my main charitable targets are about to complete, replacing Martin and the approaching Grim Reaper have made me decide that I now need to review/revise my estate for probate especially in regard to executors and trustees who not being as conversant with my affairs leaves me to action to simplify them so in the immediate I am quite busy.

It may interest you to know that I've recently lost a dozen or more of my friends to the Reaper .....

.....

..... I hope to hear from you without appropriate or inappropriate comments.”

48. On 28 April 2016, Jessica wrote to Norman as follows:

“Your decision two years ago seemed to me to be presented as a complete and final termination of any relationships. At the time, I found that really hard to understand or deal with and certainly went through a period of grief. However, in the two years since that, things have moved on and that grief had passed.

At the current time, I'm suffering significant illness, indeed I only returned to work yesterday and am currently working only part time. It is therefore increasingly important that I protect myself from further emotional stress.

My view is that if we are to resurrect any type of relationship, it has to be one that we can both accommodate and therefore to prevent any further distress or disappointment for either of us, I am going to be totally honest about how I feel about that.

There have been times in my adult life when I have really appreciated your support. At times, I have also really enjoyed some of our conversations, particularly when we have been able to laugh about some of our similarities.

However, I'm now 51 years old and ten years into a successful marriage to the most intelligent and thoroughly decent man I have ever met. Whatever your views are, Rob and I have built a very stable and loving family unit which has enabled both children to thrive. In addition, I am well regarded in my professional life. I appreciate you tend to measure success in more financial terms but to me, with a more holistic view, I think I have been able to get myself into what is a perfectly good position.

If we are to resume a relationship, from my point of view, it has to be more egalitarian than in the past. I do not want to feel bullied by you or be given unsolicited, critical advice. To say I am answerable to Rob makes our relationship sound more one sided than it is, but to the extent that Rob and I are a team, it is opinion that matters. Rob and I are both very capable and intelligent adults who no longer need parenting.

If you can accept the above then I am happy to dip a toe into a resumed relationship with you, I will leave the ball in your court but for now I expect you would like an update on the children's progresses.

Both Tash and Tom have made remarkable progress, which Rob and I are delighted with.

Tash started University in September at one of the University of London Arts places, she is studying illustration and loving it.....

We obtained permission to use our local authority funding for enabling to employ Tash and she is great with Tom. At Easter she took him to both the natural history museum and the science museum, on the train, tube etc. They adore each other.

Tom is a huge gift to us all and the progress he has made has astounded all the professionals involved. We have all, including Tom, worked very hard to continually push him on. You may recall the prediction that there was only a 50% chance he would become an independent adult. I'm totally confident now that he will.....

.....

Rob and I have discussed the contents of this letter and he understands and approves of my position. I will leave you to consider how you wish to proceed.”

49. On 4 May 2016, Norman responded as follows:

“As one who knows you would expect that you have deliberately/ completely missed the heart of our problem in that your reply is not about **cause** and **effect** but just about **effect** on you, whereas the **cause** of our stand-off was your doing and the **effect** on me was devastating, hence the stand-off, that said you are also suggesting that if we continue to have a relationship that would be preconditioned about you being protected from me **causing** you stress and disappointment being bullied and receiving unsolicited critical advice if such was possible can you also state that there would be no **causes** from you? also you mentioned ‘toe in the water’ this being an expression of ‘wait and see’ probation which I feel means that you wish to create ‘thin ice’ on which only you can walk, I have tried to generalise my reply without being specific but I would remind you that my interventions have almost without exception been at your invitation.

I could, of course ramble on and on but my autobiography will give the ‘**whole**’ story and especially inclusive of the little known **causes** as against the well used and publicised **effect** of my 1979 charges.”

50. On 7 June 2017, Norman wrote to Jessica and Rob as follows:

“As you have not replied to my last .... letter, am I to assume that you have decided to terminate our relationship? In which case, I am advised to jump a generation is probably the thing to do, so would you confirm your intentions, including a response from Natasha if like you?? she does not want to be included in my proposed Trust with such benefits as BUPA etc. Also that she does not want to be included as a Pecuniary Beneficiary for my Estate.....

With regard to Tom....., could I suggest that you write to inform me of my grandfather to grandson rights otherwise I shall probably consult a suitable 'out of Leicester' Practice to advise me on this as I don't really want the matter known locally."

51. On 7 June 2017, Jessica replied to Norman quoting an extract from her earlier letter dated 28 April 2016 and inviting the conclusion that Norman was not agreeable to proceeding on the basis that she had proposed in that earlier letter. On 12 June 2017, Norman replied to say that Jessica's email was irrelevant by reference to an enclosed index of correspondence. Norman also put Jessica on notice that so far as Tom was concerned he would instruct Birmingham solicitors with child access experience.
52. On 16 June 2017, Jessica emailed Norman as follows:

"We are quite surprised by the contents and tone of your letter dated 12 June. In addition, your chronology is incorrect.

You did indeed send a letter to us dated 28 November 2013. This informed us of *your* decision to terminate the relationship. You also sent a letter dated 29 November 2013 stating that you had decided to suspend the proposed termination with the proviso that any communication would only be between yourself and Rob.

In April 2016 when it was clear that you wished to resume some form of relationship I advised you of my feelings about that and said I was happy to dip a toe into a resumed relationship. You then sent me letters dated 4 May and 5 May making it clear that you did not accept what you saw as my 'conditions'.

.....

However, you have continued to correspond with us and therefore my email of 7 June was an attempt to give you another opportunity to consider the position.

Your response of 12 June seems to indicate an inability for us to reach a position we are both comfortable with.....

With respect to any right you may or may not have to see Tom, this is not an area of law I am familiar with other than knowing that the interests of the child will always be paramount and that all circumstances would be considered, including Tom's wishes. It is clearly up to you to decide whether to take independent legal advice."

53. On 13 July 2017, Norman's PA emailed Robert "RE: Thomas Hicken" as follows:

"Following your wife's letter of 16/06/2017 Norman feels that it would be helpful if you could let him have copies of both educational and medical reports for the last two years.

You will appreciate that the basis of such reports will give Norman a good starting point with regards Tom's current achievement before any discussion."

54. On 18 July 2017, Jessica responded as follows:

"Rob and I have discussed the email ..... We do not feel it is necessary or appropriate for Norman to have the documents requested and Rob will not be seeking Norman's advice on Tom's health or education. The whole family, but particularly me and Tom have worked extremely hard and Tom's progress has impressed all the professionals involved.

.....

I myself was diagnosed with ADHD in recent years (as a life-long condition) and Tash with ADD. Tash is doing extremely well too and is a very important figure in Tom's life. She's been a big help in Tom's progress socially and their relationship is critical given that we are old parents for Tom. We want to make it clear that neither Rob or I will be any part of, condone or agree to any differential treatment of the two children as this would be wholly unfair and potentially damaging to their relationship."

55. On 21 August 2017, Norman wrote to Jessica:

".....My concerns about Tom are roughly based on the following assumptions; As ageing parents there is a very remote possibility that Natasha will predecease one or both although one would much more likely expect her to start her own family before Tom does so in such circumstances he might be left to stand alone, no doubt you will have considered all such aspects.

Finally, I feel that all of us should have managed the past ten years better as in all cases; I think they have been the best period in what I would definitely call a 'turbulent' lifetime which should now become loving, peaceful, friendly and helpful in relationships."

56. On 25 September 2017, Norman wrote to Robert:

"Despite my 21/08/2017 letter, it would seem that Jessica is meandering away from the core object in that I've no intention of being judgmental about your two children as Jessica calls them, although, I regard Natasha, now 21 as an adult so I think she may worry about whether or not one would want to influence/change the way you have dealt with/dealing with Tom which in fact I applaud from every angle. I'm only pointing out that in later years, he might need a degree of support that when you/Jessica/ I are all deceased, things might be different for him. However, we cannot pull strings from the grave; such decisions have to be made before, whilst we're still alive."

57. Jessica wrote to Norman's PA as follows on 26 September 2017:

“I do not understand the logic of this. If Norman is talking about provision for Tom as a child only, then the fact that Tash is an adult does differentiate them. However, it appears realistic to think that we will both be alive until after Tom has become an adult. If provision is intended for Tom, as an adult then I see absolutely no justification in treating Tom and Tash differently. Further, we now know that Tash and Tom have the same disabilities and yet Tom has had the major advantage of early diagnosis and a level of support at school that would have made Tash’s school life much less problematic.

If Norman’s proposal is to make provision for Tom only (other than as a child) we are not interested. I have already said that we feel that would be detrimental to Tom. If Norman cannot accept our views, then it is better that he does not make any further contact.”

58. Norman’s PA responded on 27 September 2017 as follows:

“Reply dictated by Mr Gill in response to your 26/09/ 2017 email;

You, Rob, Natasha and Tom were all beneficiaries from his Estate and the Family Trust of which Robert is included as a Trustee, he will be able to nominate his succession for a 125 years line.

Mr Gill understands your Tom/Tash feelings but after his death, it will be up to you, Rob and Natasha how you deal with your own Legacies and as Trustees on behalf of Tom until he is an adult.”

59. Finally, on 1 October 2017, Jessica emailed Norman as follows:

“I am afraid I am going to have to ask you to cease all communication with me and my family. As I pointed out some time ago, I have been suffering with a significant illness for some years now. I find the current situation is exacerbating my anxiety and associated health problems which have already caused me to have to take time off work this year. Quite simply, I cannot deal with the complexity.

I have always found it difficult that when discussing events in 1979 and the violent episodes prior to that, as you have only wanted to talk about how hard done by you have been and to convey your version of events. You have always failed to appreciate the very significant impact that has had on your children and particular, me and Liz which will be lifelong. Quite frankly, the contents of your letters of 28 and 29 November 2013 are insulting in a number of respects.....

Recent correspondence has shown an attempt to re-write history by suggesting I am trying to terminate our relationship. That is not the case, I simply do not wish to resurrect the relationship you terminated. It seems to me that you did that in order to gain more respect from us. However, after an initial period of grief, I have found my life is simpler without having a relationship with you.

In addition, the contents of your email of 27 September are completely at odds with your letters of 28 and 29 November 2013 with regards to your

will and the family trust which stated that both would be scrapped no doubt to ‘punish’ me.

You will always do what you want to do with your money and that is your prerogative. However, this is also my right to decide who me and my family have a relationship with. You are completely entitled to take legal advice with regard to contact with Tom.....”

### **Jessica’s medical evidence**

60. Jessica has also filed and served medical evidence regarding her disabilities, being ADHD, anxiety, recurrent depression disorder and complex PTSD.<sup>1</sup> The letter dated 22 July 2020 from the then treating psychiatrist, Dr Montgomery, recorded the following:

“Jess told me ‘I feel quite broken at times’ and she is aware that her underlying stress levels are very elevated. Jess has been under enormous pressure with regards to the resolution of disputes of her father’s will which unfortunately have introduced significant rifts in the family. Jess is torn by the knowledge that even if she were to give up the court case she would blame herself in the long term for not having defended her children’s interests. As such she feels bound to continue to fight their corner..... At the moment she is off work ..... and is just about holding things together, but she is understandably concerned that she is vulnerable to worsening depression.

Jess has started to experience an increase in flashbacks and bad dreams about her experiences in childhood arising from her father’s behaviour. These experiences are intrusive and very upsetting, bringing her to halt whatever she is doing when they occur.....

.....

We discussed the possibility of Jess undertaking specific therapeutic work tackling the intrusive memories she experiences in the form of flashbacks and nightmares. It may not be possible to undertake such work until the court case is resolved.”

61. The letter dated 16 February 2023 from the current treating psychiatrist, Dr Dixon, recorded the following:

“.....she experienced a lot of trauma and witnessed a lot of violence from her father when she was growing up and so having to contest his will has reawakened a lot of these negative early life experiences.

..... She has flashbacks to the trauma and also avoids things that remind her of situations when she witnessed violence as a child.

---

<sup>1</sup> Before approving and publishing this transcript of my oral judgment, I asked Mrs Hicken whether or not she wished for the judgment to be anonymised pursuant to Civil Procedure Rule 39.2(4) and in light of the fact that it makes reference to sensitive personal medical information. In response, Mrs Hicken confirmed her wish that it is not anonymised.



.....

..... She also has long-standing low self-esteem and a feeling of worthlessness.

.....

She had a difficult childhood with a controlling violent father who hired a hit man to kill her mother and he was arrested for this and went to prison. This understandably had a huge impact on her life.

.....

We had a useful discussion regarding trauma and the impact that it can have on people and I felt that her difficulties could be characterised by complex PTSD with current depression alongside this.

.....

I also feel that she would benefit from trauma focused therapy.....”

## Analysis

62. During the course of Jessica’s submissions, it became clear to me that her attendance at trial, and despite the terms of the settlement agreement, was largely motivated by a desire to put the record straight, since she felt that wrongly she had been portrayed in these proceedings as being somehow cold and uncaring towards her father. For what it is worth, that is certainly not my view.
63. Following the seminal decision of the Court of Appeal in *Re L (A Child) (Contact: Domestic Violence)* [2000] 2 FCR 404, there is greatly improved understanding by the courts of the devastating impact on children being exposed to domestic violence between parents. The authoritative expert child psychiatric evidence in that case highlighted the emotional harm caused to children, both short term and long term, and that children are affected as much by exposure to violence, as to being involved in it. Even when children do not continue in violent situations, emotional trauma continues to be experienced.
64. More recently, the courts have recognised that domestic abuse does not only involve the threat or use of violence, but also can include patterns of behaviour, such as controlling behaviour between family members.
65. Rather than being cold and uncaring, it is clear to me that Jessica is vulnerable, having suffered and continuing to suffer significant emotional harm as a result of witnessing parental domestic violence during the course of her childhood.
66. I also find that the report of Dr Series is factually incorrect, where it states that Norman’s relationship with his children deteriorated after the 2015 Will. It is clear from the correspondence that I have previously quoted that by 2013, it was Norman who had terminated the relationship with his children. However, I do not consider that this factual error in itself undermines the overall logic and reasonableness of Dr Series’ opinions.

67. In 2016 and 2017, Norman did attempt, unsuccessfully, to re-establish a relationship with Marcus and Jessica. Rather than reject her father outright, Jessica was, perhaps surprisingly and to her great credit, willing to give it a go, provided that the relationship was more equal than it had been in the past. That was not an unreasonable request, bearing in mind Mr Weston's written evidence as to Norman's controlling behaviour towards his children including Jessica. Mr Weston stated as follows:

“[19] Over the years his relationship with his children formed a constant backdrop to his life. Those relationships were difficult. Norman was used to getting his own way and the children naturally wanted to live their own lives. From what Norman told me, I believe that Norman was generous financially for many years, but I understand there would always be a price to be paid in the form of doing what Norman told them to do. Norman found it difficult to accept that his children had their own minds. His personality was such that he always thought he was right and this particularly applied to his children's affairs. The irony is that Norman loved his children and as they drifted further and further away he felt it very keenly. About 2013 there was a fairly terminal split.”

68. Ultimately, Norman was simply unable to accept the need for restraint. As evidenced again by the correspondence I have quoted from earlier and particularly in relation to Tom's financial welfare, Norman was simply unwilling to give any weight to the legitimate concerns expressed by Jessica and Robert that treating Tom and Natasha differently in any way would be potentially divisive and undermine their own strong sibling relationship. Again, it is entirely reasonable and understandable that in all those circumstances, Jessica felt she had no alternative but to cease all further communication with Norman.

69. However, in my judgment, the fact that it was Norman, who effectively terminated the relationship with Marcus and Jessica in 2013, does not render the Will irrational. As Jessica acknowledges, Mr Weston's witness statement contains highly relevant information. He became friends with Norman in the 1950's and remained so until Norman's death. His witness statement is detailed, careful and balanced, recognising that Norman was a complex person, who possessed many positive qualities, but also some significant personality flaws. I have attached significant weight to Mr Weston's evidence, which I summarise as follows:

- a. Norman was a successful businessman. His business dominated his life. His family life was volatile. Although not an excuse for trying to arrange the murder of his wife, at the time Norman's drinking was out of control and he was probably on drugs. Norman lacked human warmth or empathy, but in relation to finance and business he was first class. These characteristics did not vary during his life;
- b. Norman saw things mainly in black and white, there was little grey. He could be a difficult person with very decided views on most things.
- c. Norman loved his children. He was generous financially to them for many years, although at a price and requiring the children to do as Norman told them to do. Norman was used to getting his own way and he found it

difficult to accept that the children had their own minds. The relationship with his children was always difficult;

- d. Towards the end of his life, Norman unsuccessfully sought a reconciliation with his children, following the fairly terminal split in 2013. He found it very difficult to believe that he was responsible for this, but accepted that there was nothing further he could do and so he was going to make a new will; and
- e. During Norman's last year, he saw him often and Norman had not changed. He still lacked an appreciation of other people's views. He was still very determined and he was still very much on the ball. He had accepted that there was no way to repair his relationship with his children, so he pursued an alternative plan with vigour.

70. It is also clear to me that Norman lacked any understanding or insight of the emotional harm suffered by the children during their childhood. Rather he continued to view himself as the victim, as evidenced by the letter he sent to Marcus and his wife dated 12 August 2013, in which he complains of having received no help from the family following the marriage breakdown in 1979. At that time, the children were aged between ten and thirteen.

71. Norman loved his children and was financially generous towards them, but exploited his financial wealth as a means of exerting control over his children. He readily acknowledged in correspondence that his termination of a direct relationship in 2013 and the threats to scrap the Family Trust were motivated by a desire to generate more consideration and respect for him from his children. Whilst Norman did not follow through with the threat at that time, the power dynamics had markedly shifted by the time the Will was made and executed:

- a. Norman had, of course, terminated the relationship on his own terms in 2013;
- b. He could not understand why Marcus and Jessica were not then agreeable to his subsequent offers of reconciliation in 2016. Norman was used to getting his own way; and
- c. Norman could be cruel and spiteful, as evidenced by the terms of a 1996 will, which left the token sum of £5 to Mary:

“..... in view of her vindictive attitude and negative actions from 1979 until her re-marriage from which time she excommunicated herself completely from me thus causing the healing of the rift with our children to be much more difficult.”

72. Jessica questions the reliability of Dr Series' opinion that Norman had a specific personality disorder and in the light of the fact that Dr Series had not had sight of Mr Weston's witness statement, but Dr Series' opinion is entirely consistent with the evidence of Mr Weston. Dr Series opined that the records he had sight of were suggestive of a personality characterised by ambition, an ability to work very hard, energetic, ruthlessness, a tendency to suspicion of others, and absorption in work to

the detriment of attention to relationships, which resulted in difficulty in sustaining close personal relationships.

73. Dr Series further opined that Norman's personality showed some features of a personality disorder, such as his lack of concern for the feelings of his family. In any event, Dr Series noted that personality disorders are enduring characteristics, which once established, usually in early adult life, persist throughout life. Mr Weston's evidence is that Norman's personality did not change over the years. Dr Series further noted that whilst psychiatrists may not agree on whether a person has a personality disorder, personality disorders are relatively common in the general adult population. It is by no means the case that having a personality disorder necessarily entails loss of testamentary capacity and in his experience would be unusual.
74. I note that Jessica has never suggested that Norman lacked testamentary capacity at the time of execution of the 2015 Will. Dr Series saw nothing in the medical records to suggest that there was any change in Norman's personality traits between 2015 and 2018, which again is consistent with Mr Weston's evidence.
75. It is also clear to me that Norman was consumed about his lasting legacy, as evidenced by:
  - a. the writing of and the continual reference in correspondence to his biography or autobiography;
  - b. the Family Trust was established to run for 125 years;
  - c. the memorandum of wishes addressed to the trustees of the Family Trust and accompanying the 2015 Will, expressed the wish that the capital monies be invested in government stocks or placed on deposit with a bank or building society with 50% of the interest earned being added to the capital account and the other 50% being kept available for the stated purposes of the trust; and
  - d. an additional memorandum of wishes even expressed the wish that if it appeared that the Family Trust may be likely to run for the entire period of 125 years, then the funds remaining should be transferred to another trust with similar purposes for as long as may be possible.
76. It was Mr Weston's evidence that Norman pursued his alternative plan of a long term legacy with vigour. This is borne out by the lengthy and detailed minutes of the meetings of the Charitable Trust on 19 February and 28 February 2018 during which meetings Norman identified, explained and costed a number of projects he wished to be funded, either directly by the Charitable Trust, or alternatively by the Friends of New Walk Charitable Trust by way of a grant made from the Charitable Trust, and having earlier sought professional advice that such a grant would not attract a tax liability.
77. By way of illustration:
  - a. the minutes of the 19 February 2018 meeting record as follows:

“New Walk Clock - Mr Gill had discussed this with Leicester City Council and had agreed to fund this project up to a total cost of £45,000. The project had the support of the City Mayor. Mr Gill had allocated a budget of approximately £45,000 for this. The project was agreed in principle. This project could be progressed to completion by the Friends of New Charitable Trust if a grant was made from the Norman Gill Charitable Trust for this purpose.”;

- b. the minutes of the 28 February 2018 meeting record as follows:

“New Walk Clock

Joe Clay, Assistant Public Lighting Manager at Leicester City Council ...has queried the integrity of the lamp column that the commission clock will sit on. He has advised their structural testing contractor was unable to carry out testing therefore, Norman Gill instructed St Eng: David Headley to investigate this matter on 29th January. Shazeen will contact David Headley and request an approximate time as to when his report will be available.”; and

- c. Norman was so meticulous that he even amended the draft minutes in manuscript to correct the error that David Headley was a structural engineer and not, as stated in the draft, a “Surveyor”.

## **Conclusion**

78. Mark Dunkley’s attendance note evidences that Norman was taken through the Will in detail prior to execution.
79. Mark Dunkley and Nicola Leeson confirm that the Will was duly executed.
80. Whilst Norman’s decision to disinherit the children and grandchildren may be regarded as unfair, that decision was not irrational:
- a. Whilst the terms of the Will represented a departure from the terms of the 2015 Will, that departure was unremarkable and explicable having regard to Norman’s longstanding and unchanged personality traits as described by both Dr Series and Mr Weston, and whether or not they constituted a diagnosable personality disorder;
  - b. The departure simply reflected the undisputed fact that despite his recent attempts at reconciliation, Norman’s children did not wish to renew a relationship that Norman had chosen to terminate several years beforehand;
  - c. Norman loved his children and financially benefited the children during his life, but that came at a price, in that he expected them to do what he told them to do. He lacked empathy and was unable or unwilling to accept any responsibility for the permanent breakdown in the relationship with his children;

- d. He knew his mind and had strong, and at times, blinkered views;
  - e. As evidenced by the minutes of the meetings of the Charitable Trust, Norman, once he had concluded that his children were not willing to reconcile, pursued his plan to establish an alternative long term legacy with his usual drive, vigour and attention to detail; and
  - f. The Will followed the broad structure of Norman's earlier wills, by giving substantial pecuniary legacies to those he considered deserving (whether other family members, employees, associates and friends), before placing the residuary estate into a long running trust, albeit replacing the Family Trust with the Charitable Trust.
81. There are no circumstances which excite suspicion that the Will did not represent Norman's intentions at the time of execution.
82. In the absence of any such irrationality or suspicion, then I am satisfied that due execution is sufficient to establish the validity of the Will, and I accordingly make a declaration in solemn form to that effect.