



Case No: E01CF759

IN THE CARDIFF COUNTY COURT

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 10/07/2020

Before :

HIS HONOUR JUDGE JARMAN QC

Between :

EDWARD PAUL MCCARTHY

Claimant

- and -

(1) DENNIS ROBERT MCCARTHY

Defendant

(2) LESLEY JOAN MCCARTHY

All parties represented themselves

Hearing dates: 6 July 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and released to Bailii. The date and time for hand-down is deemed to be 11.30 am Friday 10 July 2020.

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HIS HONOUR JUDGE JARMAN QC

HH JUDGE JARMAN QC:

1. The parties are the children of the late Margaret Elizabeth Dorcus Wilcox who died on 24 February 2016 aged 90 years. Edward McCarthy claims that his mother's home at 150 Brynglas, Hollybush, Cwmbran (the property) is held by her estate for him beneficially under a deed of trust dated 23 March 1998 (the deed) or that he is entitled to it under his mother's will dated 1 October 2014 (the October 2014 will). His sister Lesley McCarthy says that the deed is not valid as her mother did not understand the document or signed it under duress exerted by Edward McCarthy. She and her brother Dennis McCarthy both say that the 2014 will was signed by their mother under the undue influence of their brother.
2. Each of the parties represented themselves and gave evidence via video platform. The only other witness was Julian Baldwin, a solicitor who drew up the deed and wills which Mrs Wilcox had previously signed in 1999, 2004 and January 2014 (also referred to herein by their dates).
3. There is now sadly a great deal of bitterness, particularly between Edward McCarthy and his sister. Many issues were canvassed between the parties during the hearing, and it was plain that these issues were very important to them. However, not all of these issues had a great deal of relevance to the issues which I have to determine, and in this judgment I shall make findings only on those issues which are so relevant.
4. I shall first set out some of the history which I hope to make uncontentious, and then proceed to deal with the relevant issues. The history is taken largely from contemporaneous documents.
5. The parties grew up with their parents in Newport Gwent. By the mid-1980s when Mrs Wilcox was in her fifties she remarried after being widowed. She moved in with her husband, Ray Wilcox, at the property. It is a three-bedroom property which the couple rented from the local authority.
6. By the early nineties Mrs Wilcox was suffering from degenerative changes throughout her spine and from glaucoma. From the late nineties she suffered a number of fractures following simple falls, including to her right ankle, left wrist, right tibia and fibula and her left humerus. At about this time Mr Wilcox developed Alzheimer's disease. By this time Edward McCarthy was living in Reading, his brother was living in South Africa and his sister was living in Penarth. In 1996 a social worker visited Mr and Mrs Wilcox. In a reply dated 21 August 1996 to a letter from their GP, the social worker accepted that Mrs Wilcox was under a great deal of pressure caring for her husband and sister, and with demands from her stepson. Respite care for Mr Wilcox was offered but as there was a cost involved this was declined, although another offer was then forthcoming. The letter continued:

“To offer care on a permanent basis would also have cost implications; it seems that this is not acceptable to Mr and Mrs Wilcox at the moment. If there should be a serious deterioration in the home circumstances Mrs Wilcox accepts permanent care as the final option.”

7. On 12 November 1997 Mr Baldwin, then a partner in Baldwin Townsend & Co, received a letter from the local authority concerning the sale of the property under the Housing Act 1985 and enclosing a certificate of title and draft conveyance. By letter dated 18 November 1997 Mr Baldwin wrote to Mrs Wilcox at the property informing her that he had received the documentation and asked her to contact him to confirm how she wished to proceed in the matter. On the 20 November, there is a handwritten note saying that the client had telephoned asking him to hold, as money was needed “from son’s sale.” This referred to a property in Newport which Edward McCarthy was in the process of selling. On 12 January 1999 Mr Baldwin wrote again to Mrs Wilcox asking for progress as to how the sale of that property was proceeding. There is then another handwritten note saying that Mrs Wilcox had telephoned in response to that letter saying that it would be a cash purchase and that her son was completing the sale on 27 February.
8. That was confirmed in another telephone conversation with Mrs Wilcox on 9 February in which she also confirmed that there would be no mortgage and that her son was providing the money. Mrs Wilcox is recorded as saying to wait until her son’s completion before completing her purchase. The note finishes by stating that she also wanted to do a will. Mr Baldwin wrote to Mrs Wilcox to confirm that on 16 February, although he mistakenly recorded the date for completion as 20 February. He asked her to make an appointment to see him to sign the documentation.
9. Mr Baldwin recalls that Mrs Wilcox came to see him on 3 March to sign the conveyance documentation and she also signed on that day the deed. By letter dated the next day he sent the executed conveyance to the local authority and asked for completion on 23 March.
10. The deed signed by Mrs Wilcox had the date inserted in hand as 23 March 1998. The recitals confirm that the purchase money of £16,875 was provided by Edward McCarthy and the property was conveyed to Mrs Wilcox merely as trustee for him. It is also stated that the deed was supplemental to the conveyance of the property on 23 March. The body of the deed provides as follows:

“Now this deed witnesseth that the said Margaret Wilcox hereby declares that she holds the said property in trust for the said Edward Paul McCarthy in fee simple and hereby agrees that she will at the request and cost of the said Edward Paul McCarthy convey the said property to such person or persons at such time and in such manner or otherwise deal with the same as the said Edward Paul McCarthy shall direct or appoint.”
11. The deed is then signed by Mrs Wilcox and witnessed by Mr Baldwin. The typed document also made provision for signature by Edward McCarthy but that was crossed out.
12. The local authority’s completion statement is dated 23 March and shows the purchase price as £37,500 less a discount of £20,625 and a balance due as £16,875. The same day Mr Baldwin sent a cheque in that amount which was acknowledged by letter dated 25 March. Mr Baldwin also invoiced Mrs Wilcox for his firm’s fees of £235 and land registration fee of £40. On 27 March Mrs Wilcox called Mrs Baldwin to ask whether the matter had been completed and asked him to call her.

13. On 31 March Mr Baldwin wrote to the Department of Social Security to confirm that the property had been purchased by Mrs Wilcox but added that the whole of the purchase monies had been supplied by her son Edward McCarthy. On 5 June the District Land Registry for Wales wrote to Mr Baldwin's firm confirming that Mrs Wilcox had been registered as proprietor of the property but also pointing out that no entry had been made at first registration of the property in respect of the deed. It was suggested that consideration might be given to apply for a restriction to protect the rights of the beneficiary thereunder.
14. On 15 June Mr Baldwin wrote to Mrs Wilcox confirming that he had received the title deeds and that he would hold them and documentation in the firm's deed cabinet. The same day he wrote to Edward McCarthy addressed to the property confirming that he would place the deed with the title documents and advised him to consider applying to the Land Registry for a restriction, the cost of which would be in the region of £100. There was no reply to that letter. There is no indication in this or other correspondence that a copy of the deed was sent to Mrs Wilcox.
15. The following year by letter dated 13 September 1999 Mr Baldwin wrote again to Mrs Wilcox enclosing a copy of the 1999 will as requested and asking her to confirm the date that she came into the office to sign it. The day and month on the copy is left blank, but it is signed by Mrs Wilcox and witnessed. By that will the property was left to Edward McCarthy and after debts and taxes and a gift of a music centre to her grandson the residuary estate was left equally between her children her grandson and her granddaughter.
16. Thereafter Mrs Wilcox continued to live in the property and by 2001 she was living there alone. She was seen in the department of osteoporosis in St Woolos Hospital Newport in May that year. The consultant's letter noted that she lived alone but managed to get up and down the stairs. She had some support from family, but no home help input. Her husband was by now in care and passed away in 2003.
17. The following year Mrs Wilcox executed a new will, also drawn up by Mr Baldwin. By the 2004 will the property was left as to 70% to Edward McCarthy, and 15% each to his brother and sister. The residuary estate was divided equally between her children and grandson.
18. Between 2002 and 2008, Mrs Wilcox visited her son Dennis McCarthy in South Africa on two or three occasions. Although she was in her late seventies or early eighties during these visits she travelled alone. However, it is not in dispute that in later life she became forgetful, and there is also evidence that at times she was confused. In September 2012, when she was 85 years old, the police referred her to social services as she had reported large amounts of money missing from her bank account and that her pension book had been stolen. The police took her to the bank where it was explained to her that no money was missing and that her pension was paid into her account so there was no book. She withdrew £100 but within seconds said she needed to withdraw money. It was pointed out that she had just done so, and she said that she had forgotten. They visited her home and noted that there was plenty of food and the home was clean. Her GP was contacted because of the confusion. He examined her and diagnosed a chest infection which he thought had caused the confusion.

19. On 23 January 2014 the GP notes Alzheimer's disease with visits from the Alzheimer's Society. It was noted that her family did not live locally but that she had a supportive neighbour.
20. On 3 January 2014, Mrs Wilcox executed another will, again drawn up by Mr Baldwin. That did not deal separately with the property but provided that after debts and expenses her residuary estate should be divided equally between her children.
21. By October 2014, Edward McCarthy was living with his mother at the property. On 1 October 2014 another will was signed by Mrs Wilcox, which was drawn up by Edward McCarthy and witnessed by his best friend and his wife, Wayne and Karen McMillan who were visiting Mrs Wilcox at the time. Each of them filed short statements to confirm this and that Mrs Wilcox was happy to sign. Lesley McCarthy asked them to attend the hearing to give evidence but received no reply. When enquiries were made of them at my request by Edward McCarthy over the short adjournment on the day of the hearing, I was told that they had no time off work during the hearing, and no one wanted an adjournment. It follows that I cannot attach as much weight to these statements as if they had confirmed them under oath or affirmation and been cross-examined on them.
22. I now turn to the relevant issues in the case. There was no direct evidence that Mrs Wilcox did not understand the deed or was coerced into signing it, but of course more often than not evidence relating to such allegations is not direct. Instead Leslie McCarthy relied on circumstantial evidence from which these conclusions should be drawn.
23. Edward McCarthy said that his mother raised the subject of buying the property and he went with her to Mr Baldwin's office with the cheque. He says he did not want his mother carrying a cheque for such a large amount alone. He says Mrs Baldwin advised on the deed, but he heard no more about it until after his mother passed away. He says his agreement with his mother was that if he supplied the purchase monies she would leave him the property. In an email to his siblings in 2018 he said that his mother wanted the property bought because the local authority "wanted repossession of it due to a single person living in a three-bed house. He says he saw a letter to this effect and told his mother about it but could not remember the words used.
24. A number of matters of credibility were put to him by his sister many of which he denied. However, he accepted that later on he drew two lots of £2,000 from his mother's bank account so as to keep her recorded capital below the threshold above which her benefits would be reduced. This money was kept at her home. He said that "a lot of people do it." This was not an impressive part of his evidence. That alone is sufficient to cause me to be cautious about accepting his evidence unless corroborated.
25. Mr Baldwin could not recall seeing Edward McCarthy and did not recognise him, but mentioned that the deed was drawn up more than 20 years ago. He said that he would have clearly explained the meaning of the deed and its implication. She presented as wanting to buy the house "via her son." He added that he would have made sure that Mrs Wilcox knew what she was doing, and would not have allowed any pressure.

26. Leslie McCarthy put a number of criticisms to him, including not dating documents properly, not asking about her mother's health or personal circumstances before letting her sign the deed, and not making provision in the deed for such matters as maintenance of the property. It was also put that the gift of property in the 1999 will was unnecessary if Edward McCarthy was already the beneficial owner of the property. He replied that it is possible that by then he would not have remembered about the deed, although he could not comment as to whether Mrs Wilcox remembered. Nor did he comment when it was put to him that an unrelated Law Society investigation into his firm had found a casual attitude to rules regulating the profession.
27. In his written and oral evidence, he used the phrase that he "would have" explained the deed to Mrs Wilcox which suggests that, unsurprisingly, he did not have a clear recall as to precisely what was said. It was clear that he relied heavily on the documentation and on his usual practice. In my judgment, as far as it went, he gave his evidence in a straight-forward way I accept it, save for one point. Edward McCarthy's evidence that he went to Mr Baldwin's office to take the cheque as he did not want his mother carrying a cheque for such a large amount did have the ring of truth about it and it is something which he is more likely to remember than Mr Baldwin. Despite my reservations as to his evidence generally, I prefer Edward McCarthy's recollection on this point. Accordingly, it is important also to have regard to the contemporaneous documentation and to inherent likelihoods.
28. Leslie McCarthy relies on a number of circumstances to show that it is unlikely that her mother understood or willingly signed the deed, whilst accepting that her mother was "not stupid" and that she was excited about owning her home for the first time. In her statement dated 23 January 2020 she said this "I agree that once my mother had been convinced by Edward she had no choice but buy her home because the alternative was homelessness, she did try to see the positives.
29. However, she points out that the subsequent wills are inconsistent with the deed and that her mother told no one about it. Her brother Edward did not ask for the property to be transferred to him during their mother's lifetime. Her mother thereafter obtained discounted insurance on the basis of being a home-owner which she would not be if the deed were valid. Her mother could not afford to maintain the property and it was not appropriate for her to continue to live in the property and to negotiate steps leading to it and stairs, given her health issues and advancing years. She had a secure tenancy before purchasing the property but none after signing the deed. Her eyesight was poor, and she would not wear her glasses. She says that later on her mother told her that Edward McCarthy shouldn't have all the property as he had taken some money from his mother, and Edward McCarthy agreed.
30. I accept that these points justify looking carefully at the circumstances surrounding the signing of the deed. There is a factual dispute as to when Mr Wilcox went into care. Edward McCarthy says he had not seen him on several visits to his mother prior to purchase and assumed he had died. It is clear from medical notes that Mrs Wilcox was living alone by 2001. However, it is also clear that as early as 1996 permanent care was a possibility in the event of serious deterioration. There is no evidence as to when such deterioration occurred, but in my judgment the possibility was clearly in the mind of Mrs Wilcox by 1996, and that might mean that the local authority would then regard her as a single occupant of a three-bed local authority property.

31. In the circumstances described above, the contemporaneous documentation is very important. In my judgment that shows that from November 1997 to completion in March 1998, it was Mrs Wilcox who was dealing with Mr Baldwin. She responded appropriately to his enquires over this time and, on occasion, chased him for progress.
32. Whilst it is true that the deed does not provide for her accommodation needs or maintenance of the property, Edward McCarthy says he would not have turned his mother out and she carried on living there until she herself went into care shortly before she died. She continued to live there for some 16 years after the deed was signed.
33. Inherent likelihoods are also important. Given her husband's illness and possible need for permanent care, and the substantial discount, which was being offered on the purchase price, it is not surprising that Mrs Wilcox wanted to buy the property. This ties in with her daughter accepting that her mother was excited at owning her own home.
34. It was not in dispute that Mrs Wilcox could not have made the purchase without the purchase price being provided by Edward McCarthy. Dennis McCarthy accepts that his brother asked him at the time if he wanted to help with the purchase monies, but he did not then have money to hand. Leslie McCarthy was less clear about whether she too was asked, as her brother Edward says, which is perhaps unsurprising after all this time. But she accepts she knew about it at the time because she says she told her brother Edward that it was a stupid idea.
35. Nor is it surprising in my judgment that Mrs Wilcox should want her son who had provided her with the purchases monies to be entitled beneficially to the property. Indeed, at one point in her evidence Lesley McCarthy said that her mother believed she had a moral obligation to leave the property to her son Edward as he had paid the money.
36. As for the subsequent wills, it is clear that Mrs Wilcox wanted to make a will when dealing with the purchase of the property. I do not find the contents of the 1999 will to be significantly inconsistent with Mrs Wilcox's understanding of the deed. It can be explained on the basis that that was the understanding she had with her son, or on the basis that it dealt with the legal title to the property. Another possibility is that she had forgotten about the deed, with no copy, as Mr Baldwin accepts he could have. The later wills are likely to be explained on that basis in my judgment.
37. The fact that Mrs Wilcox insured the property as homeowner is not surprising. She was the registered proprietor and it remained her home. As for monies being taken from her by her son Edward, something which he denies, his sister accepts that in 2000s she had a lot going on in her life, including providing some care for her mother, and cannot be sure about the dates. In my judgment if this was said by her mother, it is likely to be as a result of confusion as occurred in 2012. I am not satisfied her son accepted what his mother says. In my judgment that is unlikely.
38. Taking all the above into account I have come to the conclusion that Mrs Wilcox did understand the deed and signed it willingly. Edward McCarthy is entitled to have the property transferred into his name and I shall so order.

39. That makes in less important to make findings about the October 2014 will, as once the property is transferred to Edward McCarthy, the remainder of his mother's testamentary provisions would be the same under the January 2014 will. This includes the appointment of all three parties as executors and trustees. Dennis McCarthy has renounced his right to act as executor. However, as the issue has been raised, I shall deal with it.
40. Edward McCarthy says that it was while having tea with Mr and Mrs Milligan that his mother told them that the property would be left to him. He says that he was living at the property then and had a computer and printer there. He asked his mother if that is what she wanted, and would she sign a will to that effect, and she replied yes. Accordingly he used the January 2014 will, a copy of which he found at the property, as a template and simply altered the provision regarding the property. That is borne out by comparing the two documents. He then took what he had typed into the lounge where his mother was still chatting to Mr and Mrs Milligan. She signed it in their presence and they both signed as witnesses.
41. This account is somewhat concerning, having regard to the facts that Mrs Wilcox was then in her late eighties with a possible diagnoses of Alzheimer's disease, that all previous wills had been signed at Mr Baldwin's office and the witnesses were the best friend and his wife of the beneficiary of the change. Only limited weight can be attached to their statements.
42. However, given the background of dealings with the property as set out and found above, the provision is not surprising, and I am not persuaded that her signature was the result of undue influence.
43. Any consequential matters such as costs and permission to appeal which cannot be agreed between the parties should be the subject of written submissions of the parties and sent to the court and copied to each other within 7 days of this judgment being handed down. I will make a determination of them on the basis of the written submissions without the need for that parties to attend another hearing.