

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN PROBATE AND ADMINISTRATION

SUIT NO. P. 725 OF 1985

BETWEEN	DORRETT P. WISDOM	PLAINTIFF
A N D	LUCILLE P. VAZ	FIRST DEFENDANT
A N D	DELROY MCPHERSON	SECOND DEFENDANT
A N D	ANDRE K. WISDOM	THIRD DEFENDANT
A N D	JOY M. WISDOM	FOURTH DEFENDANT
A N D	LOUISE C. LEVY	FIFTH DEFENDANT
A N D	BRUMALIA CONGREGATION OF JEHOVAH'S WITNESSES	SIXTH DEFENDANT
A N D	JUDITH MCPHERSON	SEVENTH DEFENDANT
A N D	NORA I. MILLER	EIGHTH DEFENDANT

Crafton Miller and Nancy Anderson instructed by Crafton Miller and Company for the Plaintiff.

Dennis Daly instructed by Thwaites, Fairclough, Watson and Daly for first named Defendant.

Errol Hall for second named Defendant.

HEARING ON July 17, 18, 19, 20, 21, 24, 25, 26, 1989:
and April 5, 1990

BINGHAM J:

The Claim and Counter Claim in this matter relates to a Will purported to be that of the late William Warrington McPherson and to have been executed on 20th November, 1983.

The writ seeking proof of this Will in solemn form was lodged in this Court on 6th June, 1985. The matter came on for hearing in July 1989, over five years after the Testator's death. This hearing was concluded just prior to the commencement of the long vacation and before my own vacation leave commenced on 18th September which meant that no opportunity then existed to enable a Judgment to be prepared and made ready before I resumed my duties at the end of January, 1990.

As the allegations set out in the Counter Claims filed in this matter are of the gravest nature and carry with them serious implications should there be a finding in favour of the first and second defendants, there has been the added need for me to proceed to examine, evaluate and assess the

evidence in this matter with the most scrupulous care. This Judgment that I now propose to deliver seeks to do just that.

The Evidence

William Warrington McPherson died on 17th June, 1984 at his home at 38 Ward Avenue, Mandeville, Manchester at the age of 74 years. He had been predeceased by his wife Lucille Mignonette who died in 1975 after a prolonged illness lasting some three years and survived by his three children, Dr. Delroy McPherson, Dorrett Wisdom and Lucille Vaz as well as his three sisters, Louise Caroline Levy, Judith May McPherson and Nora I. Miller.

The deceased from the evidence which emerged during the hearing had been a very successful businessman who was endowed with a shrewd disposition, careful and meticulous in managing his affairs and one who from the nature of the property which he left behind, invested his money mostly in real estate. Having regard to the steep escalation in the value of real estate in Jamaica in general, and towns such as Mandeville with its salubrious climate in particular, it would be idle to contend that the present value of the deceased estate both at death and at current market values would not be considerable.

The deceased I am told was one who, apart from accumulating material wealth, served his community well and who apart from being a businessman operating a Pharmacy in Mandeville for many years and up to 1973 when he retired from business, was a Justice of the Peace from the early 1950's and one who in that capacity would have been required to perform a number of judicial and other official functions as a result of that status.

From the evidence it is clear that the deceased was one who related well with persons in many walks of life and who was well respected in the community in which he lived and prospered.

It is common ground, however, that with all these attributes among which might be added the obvious joy and pleasure which the deceased must have got from having seen his son and eldest child Delroy qualify and succeed as a Medical Practitioner and his daughters marry and produce grandchildren. With all this in mind one might have assumed that at his death the deceased would have been contented in his mind that he was leaving a world in which he had found to a large measure "that peace which passeth all understanding". This

was, however, not to be for two main reasons:-

1. In 1975 following his wife's death there was a bitter quarrel with his son Delroy, the details of which was not disclosed during the hearing, which brought about a deep rift between them which was to last up to and even beyond his passing. It was of so extreme a nature as not to cause Delroy to attend his funeral and in so doing to pay his last respects to his late father.
2. This rift, or feud for want of a better word, between the deceased and his son, Delroy, caused the deceased to become estranged from some of the near members of his family and this was particularly so as between Delroy and his sister, Mrs. Dorrett Wisdom with whom he as in the case of the deceased now no longer enjoyed any relationship. This also resulted in the relationship between the deceased and the other immediate members of his family becoming somewhat strained.

Delroy had, at his request made to the deceased, been disinherited in a Will executed by him on 7th April, 1978 at the offices of his long-standing Attorneys-at-Law, Delaphena and Iver.

The plaintiff had been living in the United States of America up to 1972 when her late mother took seriously ill, at which time she was summoned home to attend to and care for her. Following her mother's death in 1975, she remained on in Jamaica assisting the deceased in managing his affairs and also operating a Pharmacy in Mandeville.

It is common ground that the deceased despite his advancing years handled most of his personal affairs himself. He has been described by both his son Delroy and the plaintiff as being a very private person and one who did not discuss his affairs with members of his family. He was minded to confine such matters to his long time legal advisers, Delaphena and Iver.

It was against this background that on 7th April, 1978, almost three years following his wife's death and added to this later down in the same year the bitter quarrel between his son Delroy and himself and with the feud that had developed still remaining unresolved, that the deceased set about the task of disposing of his earthly possessions by executing his last Will and Testament

at the offices of his long standing Attorneys-at-Law, Delaphena and Iver. This Will, the validity of which is not in dispute was subsequent to the deceased's funeral, and more particularly one week later, read at this office in the presence of the plaintiff and her sister Mrs. Lucille Vaz, they being the two persons named as the personal representatives in the Will. They were also the two principal beneficiaries named under the various dispositions in that document, as apart from the devise of a dwelling house to two of the deceased's sisters and a bequest to the other, the bulk of his estate was left to his two daughters. It is of some significance and a matter which bears repetition that the manner of the execution of this Will was, given the description of the deceased by the plaintiff who assisted him in administering his business affairs following his wife's death in 1975, as well as by his son Dr. Delroy McPherson with whom he enjoyed an excellent relationship up to 1975 when the quarrel resulted in all association between them being severed, was entirely in keeping with the nature of the man whose disposition was one who was described by the plaintiff as being a private person, meticulous and careful in handling his affairs and who did not like to be questioned about his affairs.

It is of further significance that although his eldest daughter and business manager, Mrs. Dorrett Wisdom testified that she had some knowledge of the existence of this Will and where it was to be located, her evidence is totally lacking as regards the circumstances through which she came by the means of such knowledge, or what prompted the deceased to make certain remarks which she sought to attribute to him. What is clear is that up to the time of the reading of this Will at the offices of Delaphena and Iver one week after the deceased's funeral the plaintiff had up to then no knowledge of its contents. She would then have learnt for the first time, not only of the fact that the bulk of the deceased estate was to be shared almost equally between her sister and herself, but also of the fact that they were both named as the Personal Representatives to administer the estate.

It was the plaintiff who in her evidence sought to portray a strained relationship as existing between the deceased and his sisters following the feud which developed between the deceased and her brother Delroy in 1975. This, it was no doubt being contended would account for the changes in the disputed Will (Exhibit 1) in so far as it affected certain dispositions made in

1978 Will. In this regard it is of crucial importance that there is not one scintilla of evidence that the relationship between the deceased and any of the beneficiaries named in the 1978 Will had altered in any manner for the worse between the execution of that document on 7th April, 1978 and his demise on 17th June, 1984. Nor for that matter is there any evidence that the confidences and trust which this very private person reposed in his long standing Attorneys-at-Law, Delaphena and Iver, had altered or waned within that period. This fact is of importance as the deceased would certainly have had that in contemplation when he was executing this Will.

Mrs. Wisdom sought to suggest that the deceased had ceased consulting that firm for sometime before his death. She did not give any reason for such an action on his part nor am I minded to conclude from the absence of any reason that any existed. Moreover, had this been so, given the nature of the deceased as the evidence indicated the question which arises is as to whether he would allow such an important document as his last Will and Testament to remain in their custody?

It is given this state of affairs that one is now being asked to determine that with his daughter and Business Manager, Mrs. Wisdom being on her evidence off the island in November, 1983, that the deceased is alleged to have executed the disputed Will on 20th November. There is no evidence that the deceased was then indisposed or wanting in his capacity at the time of the alleged execution of this Will. Given the fact of its alleged validity, the circumstances and manner of the execution of this later Will would in my opinion, when the evidence is examined, on a balance of probabilities be inconsistent with its execution by the deceased, and clearly out of character with that governing the execution of the 1978 Will. There was no attempt made by the deceased who has been described as a careful and meticulous person to retrieve the 1978 Will from his Attorneys-at-Law in whose custody it was and remained even after this later Will was supposed to have been come into existence. It is further strange that the deceased who had chosen to keep the contents of the 1978 Will private and known only to his Attorneys would now, should he have decided to make changes in that document not consult them, but seek to confide in two of the most unlikely persons, being a former drinking partner and his carpenter as witnesses to this Will. Having regard to the fact

that the deceased was at that time from all appearances in good health and mentally alert, the fact that he had merely three days prior to the alleged execution of this disputed document signed two legal documents (Exhibit 4), had he contemplated such substantial changes as the disputed document (Exhibit 1) reveals there is no plausible reason why he would not have consulted his Attorneys-at-Law who were within "an arms reach".

One is being asked here to pronounce for the force and validity of this disputed document which was alleged to have been executed by a testator who apart from being a very private person and who was also described as careful and meticulous and was said by his son, Delroy, to be very ritualistic as to the manner in which he executed documents. In this regard the execution of the 1983 Will in which as to its manner and the circumstances as disclosed by the evidence of Burchell Barrett is shrouded in uncertainty, doubt and suspicion having regard to the evidence which one is being asked to accept that the deceased contrary to his usual manner of executing documents in his capacity as a Justice of the Peace when he would be seated at a table with legs crossed and being positioned at a particular angle to the table on which he would be placed the documents in making his signature, then having completed his task he would be seen examining it carefully before passing it over to the person presenting it. Now on the occasion of executing his last Will and Testament in his own home he is here described by the witness, Burchell Barrett as making his signature while standing and bending over his dining table to carry out such an important task. The two attesting witnesses then followed suit not only adding their occupations to their signatures but Barrett for good measure stated his address as being Mandeville as well, after which they both departed from the premises.

The circumstances surrounding the alleged execution of the later will given the nature and character of the deceased is sufficient to cast doubt upon the credibility of the evidence of Burchell Barrett who testified that he was present and saw the deceased not only sign the document in the manner as he described but that Baker and himself followed suit as witnesses in a similar manner.

As Mr. Daly has in my opinion properly submitted the account of the manner of the execution of the suspect document by the testator, given the

nature of the man, has about it an air of unreality. Nor is the doubts which the evidence of the witness Burchell Barrett conjures up removed by the failure on the part of the Counsel for the plaintiff to call Andre Wisdom who it was said by Barrett to have been present when the suspect document was executed by the testator. His evidence which it was hoped may have shed some light into this dark and shrouded area of the evidence was further removed by the failure to call this witness. Nor is the doubt removed or lessened when one examines the unchallenged evidence of Lucille Vaz relating to the strange catalogue of events which followed closely upon the reading of the 1978 Will at the offices of Delaphena and Iver following the deceased funeral.

If the account as related by the plaintiff is to be believed then given her account that she was at various times before the deceased death told by him that "he had made changes in his Will" and about a month before his passing told that, "it was among his papers in his bedroom," yet she allowed the 1978 Will to be read at the offices of Delaphena and Iver following his death without making any attempt to locate this later Will. This in my opinion is sufficient to cast grave doubts upon the veracity of this witness that any such conversations took place between the deceased and herself. Further, in this regard her conduct in failing to make a diligent search for this disputed document either before being summoned to the offices of Delaphena and Iver or within a reasonable time after the reading of the 1978 Will lends support to the inference that up to the time of the reading of the 1978 Will there was no other testamentary document executed by the testator in existence.

It is of no little significance that Mrs. Vaz was staying at the family home at 38 Ward Avenue following the deceased funeral and was present during some of these random searches which, given the plaintiff's evidence, were not conducted in earnest. It is also of no little coincidence that as soon as Mrs. Vaz left the residence to return to the United States of America the disputed Will was produced. In this regard the plaintiff's conduct in:-

1. Allowing the 1978 Will to be read.
2. Failing to carry out a diligent search for the alleged later Will within a reasonable time thereafter; both these factors in my opinion support the contention of the Attorneys-at-Law for the proponders of the 1978 Will that certainly up to the reading

of that Will there was no other testamentary document in existence.

The observation by Mr. Daly that the person preparing the questioned document Exhibit 1 from the form and manner in which it was prepared would have had to have a copy of the 1978 Will at their disposal is, given the form and contents of that document (Exhibit 2), most timely and proper. The only persons who would have been entitled to copies would have been the Personal Representatives following the reading of the Will and with the departure of Mrs. Vaz for the United States of America, the plaintiff would have been the only other interested party with the authority to request and to obtain such a copy and have the same at her disposal.

As the contents of the 1978 Will was not known to the plaintiff before it was read at the offices of Delaphena and Iver a week following the testator's funeral, in the light of the effect of the evidence of Mr. Harvey Lassiter, such changes as were effected in the preparation of the questioned document (Exhibit 1) had to occur at a period following the reading of the 1978 Will, and having regard to the evidence as to the alleged finding of the questioned document this would have had to be at some period following the departure of Mrs. Vaz for the United States in early September, 1984.

The defence has contended through its pleadings that the signature of the deceased as it appears on Exhibit 1 is a forgery. In seeking to discharge the heavy onus upon them the defence called a questioned document Examiner Harvey G. Lassiter in seeking to establish beyond a reasonable doubt that the signature "W. W. McPherson" appearing on the questioned document (Exhibit 1) was not that of the deceased.

The Expert Evidence

Having examined the signature purporting to be that of the testator appearing on the questioned document (Exhibit 1), Mr. Harvey Lassiter gave as his opinion that the signature "W. W. McPherson" appearing thereon by its very nature in which it was reproduced contained obvious flaws which made it for that reason by itself, a suspect document. When it was compared with the known signatures of the testator, he was now even more firm in his opinion that the handwriting appearing on Exhibit 1 as being the signature of the testator was an attempt by someone to simulate the signature of the testator and was not genuine. The witness in his testimony was at pains to elaborate

the reasons which lead him to the conclusion to which he came and in this regard he demonstrated not only a wide knowledge of the subject matter which he had been called to speak to as to his skill and competence in this field as a questioned document examiner but this was further demonstrated in a practical manner in Court when he utilised a blank cartridge paper (Exhibit 5) in reproducing a signature bearing a marked similarity to that appearing on the suspect document (Exhibit 1).

The witnesses testimony was subject to a most thorough and searching cross examination by leading Counsel for the plaintiff during the course of which a number of authoritative statements and extracts from textbooks by experts in this area of discipline were brought to the witnesses attention in an attempt to weaken or destroy his credibility and his claim to the competence and skill that he possessed. As to how well the witness performed in this area of his testimony can be gathered from the fact that none of these statements or extracts from any of these works were tendered in evidence by leading Counsel with a view to challenging the answers which the witness gave in response nor any of the reasons which he advanced as being the basis for arriving at his conclusion refuted or was his testimony shaken.

Having myself taken full opportunity both during the hearing and over the many months that I have deliberated on this matter to thoroughly examine the signature on the questioned document (Exhibit 1) when compared with that of the nine known signatures of the testator of Exhibit 2 - 4 and in particular with that appearing on the Warrant of Information and the Information (Exhibit 3) the two documents which were executed contemporaneously with the signature which appears on the questioned document (Exhibit 1) the falsity of the signature on that document is in my opinion established beyond the peradventure of any doubt. The observation by Counsel for the first named defendant that the handwriting appearing on the suspect document (Exhibit 1) as being that of the testator is an amateurish attempt at copying his signature is in my considered opinion not without merit. Not only is there the obvious lack of fluency of strokes a marked feature of the testator's handwriting in the signature in the disputed document but there is further an obvious variation in the testators style of making his signature in the manner in which the upward and downward strokes are executed which resulted in a heavy

and a lighter flow of the pen being used as against the signature on the disputed document in which the entire stroking of the pen was heavy and is consistently so throughout the signature. This had to be so as the person doing the act in carrying out his or her task would have been concentrating all mental efforts on seeking to reproduce the suspect signature as to so closely resemble the genuine one while being at the same time unaware of such important details as fluency of style so marked in the stroking mannerisms of the testator, a trait which the expert witness Mr. Lassiter so aptly described as being the testator's trademark, and that of someone who took a pride in his handwriting.

The witnesses skill and competence was further demonstrated with even greater force when he was requested under cross-examination to canvass an opinion as to the style of writing utilised by the testator. The fact that it is common knowledge that the testator was a very meticulous person is of significance in determining whether he in fact executed his signature on the suspect document in the manner as described by the witness Burchell Barrett while bending over his dining table, as against the unchallenged testimony of Dr. McPherson in speaking about someone of whom he had by reason not only of the tie of blood, but with whom certainly up to 1975 when certain differences prompted a parting of the ways, he enjoyed excellent relations and who up to then had a very close and intimate knowledge of the testator's habits and peculiarities. The fact that cheques bearing the signatures of the testator, the plaintiff and Dr. McPherson (Exhibit 3) indicate that certainly up to 1975 when the differences arose between them, there would have been numerous opportunities available for him to observe this characteristic on his father's part. His unchallenged testimony describing the manner in which the testator would execute documents which would certainly fall into a similar category as his Last Will and Testament was so graphic and telling in its effect that it bears repetition:-

" Q: Had you ever seen your father sign his name?

A: Yes sir.

Q: On how many occasions. One or two?

A: Innumerable occasions.

Q: Would you be able to assist us as to how your father would sign his name?

A: He was very ritualistic. Under normal circumstances I would expect him to be seated to cross his hand to have the document he was signing at a particular angle, to make the signature examine it and turn it over to the person for whom he was signing it."

The witness further testified that the idea of his father executing his signature to the suspect document (Exhibit 1) in the manner as described by the witness Burchell Barrett while bending over his dining table was one which was highly improbable.

Dr. McPherson's account is consistent with the opinion canvassed by Mr. Lessiter arrived at after examining the testator's signatures on the known documents (Exhibits 2 - 4). Apart from the various factors to which this witness described as present in his examination of these documents, he alluded to the fact that a writer such as the testator who had developed a particular style of handwriting "is one who takes pride in his writing. His signature is his trademark and as such it exhibits a degree of vanity." (Underlined for emphasis).

In the light of the foregoing I have not the least hesitation in accepting the testimony given by Mr. Lassiter which is fully supported by that of Dr. McPherson. It is of further significance that in the light of the disposition made to Dr. McPherson in both 1978 Will, which is not disputed, and the suspect document which remain in an unaltered state, it is clear that this witness does not stand to benefit from an adverse finding in relation to the latter document (Exhibit 1). There is further support for their evidence from the testimony of Mrs. Lucille Vaz. Although on reflection I was impressed with both Dr. McPherson and herself as to the very frank and forthright manner in which they both gave their testimony, however, in the light of the fact that Mrs. Vaz is one of the principal beneficiaries named in the 1978 Will, she clearly falls into the category of witnesses who are to be regarded as parties with an interest to serve and her evidence when examined by itself would not carry the same weight as that given by her brother Dr. McPherson. When looked at cumulatively, however, along with that of Dr. McPherson and the expert opinion of Mr. Lassiter it clearly establishes the falsity of the signature appearing on the suspect document and with it the allegations set out in the

Counter Claims beyond a reasonable doubt.

In summary therefore:-

1. In determining this crucial issue of fact both the nature and character of the testator with all his various habits and peculiarities are of paramount importance.
2. The evidence in this case points unquestionably to the fact that the testator William Warrington McPherson was a man of mature age and sound judgment and it was by exercising these particular talents that he was able to accumulate the property which he was possessed of up to the time of his death.
3. He was a very private person and one who did not like his conduct to be called into question, by anyone including the immediate members of his family.
4. Although he would at times discuss personal and intimate family matters with members of his family he did not for reasons best known to himself disclose the details.
5. He was very fond of his family and in particular his children and grandchildren and this fond relationship continued up to 1975 when in that year there was a serious quarrel between his eldest child Dr. Delroy McPherson and himself at which time certain strong feelings were expressed and they each went separate ways.
6. That in 1978 against the background of the events of 1975 which remained in an unresolved state the testator executed what was his last Will and Testament at the offices of his longtime Attorneys-at-Law in Mandeville, Delapena and Iver. In keeping with the nature of the testator the contents of that document remained private and were unknown to the members of his family including the plaintiff.
7. Apart from a bequest to one of his three sisters and a devise of a dwelling house to two of them, the testator left the remainder of his estate to be equally divided between his two daughters. Both of them were also named as the joint Personal Representatives in this Will.
8. The relationship between the testator and all the beneficiaries named in the 1978 Will remained unaltered following the execution of that document and up to his death.

9. When all these factors are examined, the events and circumstances which were alleged to have occurred on 20th November, 1983 as related in the testimony of Burchell Barrett as to the manner and execution of the suspect document (Exhibit 1) are of such a nature as to excite the gravest doubt, suspicion and uncertainty as to such an event taking place.
10. When to this is added the fact that one week after the testator's death both Mrs. Vaz and the plaintiff Mrs. Wisdom are summoned to the offices of the Delaphena and Iver and the contents of the 1978 Will read at which time Mrs. Wisdom made some passing reference to the fact that this is not the testator's last Will. This comment was being made against the background, as she has admitted in giving evidence, that she did not know the contents of her father's Will
11. Mrs. Vaz who resided in the United States of America and who was one of the Personal Representatives named in the 1978 Will delayed her departure to return home from July to September 1984 in an endeavour to locate this alleged document during which period the plaintiff carried out random searches to locate it without any success. It is not until after Mrs. Vaz has departed for America that the suspect document is uncovered.
12. The plaintiff who is the person locating this document is not able to state with any degree of particularity the date and the circumstances in which this document was found.
13. When the testimony of Burchell Barrett is considered the suspect document is executed in a manner which is totally inconsistent and entirely out of character with the nature and disposition of the testator.
14. The fact that there is no evidence suggesting any want of capacity on the part of the testator in November 1983, had he chosen to effect "changes in the 1978 Will" without consulting his longtime and trusted Attorneys-at-Law Delaphena and Iver, it is to be expected that the testator would have at least retrieved that document and, given the person he has been described as being, destroyed it.

The fact that the 1978 Will remained in the custody of his Attorneys-

at-Law without its contents being made known to the members of the family until it was read following the deceased funeral is, therefore, evidence supporting the fact that it was the testator's last Will. This fact is established beyond a reasonable doubt by:-

- (i) The expert opinion of Mr. Harvey Lassiter which is fully supported by the unchallenged evidence of the testator's son Dr. McPherson.
- (ii) The evidence of surrounding circumstances that from 7th April, 1978 when the Will was executed by the testator at the offices of Delaphena and Iver there was no changed circumstances in the relationship between the testator and any of the beneficiaries up to the time of his death in July 1984.

In conclusion when all the evidence is examined, weighed and assessed what has emerged is evidence adduced in support of a Claim demonstrating a desperate attempt on the part of certain persons to frustrate the intentions of a testator who from the very nature in which he sought to dispose of his possessions by the manner in which the 1978 Will was executed was no doubt fully aware that such a task was not beyond human comprehension. History indeed has shown that such attempts are not rare and will recur from time to time. The attempt made in case has on the evidence presented failed. The result is that the claim for proof of the suspect document (Exhibit 1) to be admitted to Probate in solemn form is rejected and there will be Judgment entered for the first and second defendants on the Claim and the Counter Claims .

The prayer sought for in the Counter Claims in respect of the Will of 1978 to be admitted to Probate is granted.