



In *Turner v Phythian* (2013) EWHC 499, we successfully acted for the Claimant, Lynda Turner, in challenging the validity of the last Will of her Aunt, Iris Wilson.

The Judgment in this case was delivered by Vivien Rose sitting as a Deputy Judge of the Chancery Division on 15 March 2013.

It was her judgment that the Will of Iris Wilson, which had been prepared by Mr Phythian and left the entire Estate to him and his wife, was invalid on the grounds of lack of testamentary capacity and lack of knowledge and approval.

The challenge

When acting for a family concerned about the terms of a Will, the initial challenge is to understand the circumstances surrounding the preparation of the disputed Will in order to determine what, if any, basis there might be to challenge the Will and what evidence is going to be needed to be successful.

The evidence needed will in all cases depend on the circumstances of the case. For example, was the disputed Will made by a solicitor or at home; is there evidence that calls into question the testator's capacity; does the Will omit people who might have expected to benefit; is the Will made very different from previous Wills; was the Will made following a bereavement or shortly before the testator's death.

Our approach

In this case, the key factor was the detailed witness evidence of the family. We worked alongside our client to obtain detailed statements from the family which together created an overwhelming case to find against the



terms of the disputed Will.

The outcome

In relation to ground of lack of capacity, the key finding of the Judge's was that Iris Wilson executed the Will whilst suffering from an affective disorder brought about by her deep grief at the death of her twin brother some weeks previously and the earlier death of her husband.

In this regard, the Judge cited with approval the words of Briggs J in the case of *Key v Key* (2010) EWHC 408 (Ch).

As regard to the question of knowledge and approval, the Judge found that the Will was prepared in circumstances that ought to excite the suspicion of the Court in accordance with the rules set out in *Barry v Butlin* (1838) 2 Moore's Privy Cases.

The Judge found that Mr Phythian failed to discharge the burden so raised due to factors including the circumstances that the Will had been made and the fact that Iris Wilson's family, to whom she was very close, had been completely excluded from the Will

How we made a difference

Our specialist experience gained from handling a very wider variety of [Will disputes](#) was an essential element of the successful outcome. We were able to focus in on the key elements of the case and ensure our client's case addressed these clearly and with sufficient detail.