Cooper v Chapman [2022]: the High Court finds a will to be valid despite the absence of the executed original and any copies

Dr Steven Cooper was married to Mrs Sarah Cooper for 13 years and they had 2 children together before divorcing in 2016. Dr Cooper then began a relationship with Karen Chapman, which continued until his death.

In 2009, whilst married to Mrs Cooper, the deceased made a will which left his estate to his children, contingent on them reaching the age of 21 (the "2009 Will"). Following Dr Cooper's death in July 2019, Mrs Cooper submitted the 2009 Will for probate. Ms Chapman rejected this. She claimed the deceased had drafted a homemade will on his computer in March 2018 (the "2018 Will") which revoked the 2009 Will and left most of his estate to her. The 2018 Will left no provision for the deceased's two children and explained they were already fully provided for during the financial settlement of his divorce from Mrs Cooper.

The fact that the only trace of the 2018 Will that could be found was in a file on the deceased's computer was a problem for Ms Chapman. Computer experts instructed by Ms Chapman and Mrs Cooper agreed that the file was created on 24 January 2018, amended on 20 March 2018, copied to another computer on 4 February 2019 and then remained unaltered.

Ms Chapman claimed the deceased printed this file and signed it on 27 March 2018 before later acknowledging his signature in the presence of two witnesses. Although no paper version of the executed 2018 Will was found at the deceased's home, Ms Chapman submitted that the 2018 Will was valid because the s.9 Wills Act 1837 ("s.9 WA") requirements were satisfied. Acting as her children's litigation friend, Mrs Cooper disputed this on the grounds that (a) these events never happened; or (b) if they did, the executed 2018 Will was later destroyed by

the deceased with intent to revoke it.

The judge, Klein HHJ had to rely on oral testimony due to the absence of physical evidence. The contention that the witnesses were lying when they stated that they signed a document on about 27 March 2018 was quickly dismissed. Klein HHJ stated it was “improbable” that the witnesses would commit perjury for no personal benefit, and believed they were “genuinely trying to tell the truth.” To the question of whether the document they witnessed was the deceased’s signed 2018 Will and whether it was correctly executed and attested, Klein HHJ concluded that on the balance of probabilities, it was.

The final contention in question was whether the deceased later revoked the 2018 Will by destroying it. Klein HHJ decided this was also improbable, mainly because nothing apparent occurred after March 2018 to change the deceased’s position that he wanted to make significant testamentary provision for Ms Chapman.

Consequently, the High Court held that the 2018 Will drafted on the deceased’s computer had been validly executed in accordance with s.9 WA, despite the fact that neither the executed version nor any copies of it were found.

Dino Sikkel

Partner