Cripps

Who pays in a will dispute?

An important question for those involved in ligation is who will be responsible for the costs?

The recent case of Goodwin v Avison [2021] offers a helpful reminder of the general litigation cost principles as well as offering a specific insight into how these cost principles apply when a claim is abandoned part way through.

The facts

Thomas Goodwin died in 2018 leaving an estate worth between £3-£4 million. After his death, two of his daughters disputed his will on the grounds of (1) lack of due execution (2) lack of knowledge and (3) undue influence. It was also understood that Mr Goodwin had intended to make a new Will, but this was not executed.

Mr Goodwin's son issued proceedings seeking an order in favour of the Will and, after 6 days at trial, the defendants withdrew their challenges to the Will. The matter of costs still needed to be determined.

General cost principles

Generally, in litigation, a losing party will pay the winning party's cost (though this is rarely 100% of the winning party's costs) this is known as cost-shifting. Whether cost shifting applies in a specific case and the proportion of the costs payable by the losing party is subject to the court's discretion.

The judge in Goodwin confirmed this but clarified that the court's discretion is not unfettered and must be exercised in accordance with established principles. These principles are outlined in CPR 44.2(4) and (5) and

include:

- the conduct of both parties including any pre-action conduct;
- whether a party has been wholly or partially successful; and
- whether there have been any admissible offers to settle.

Costs arguments in the case

The defendants put forward two specific cost arguments in this case:

- the litigation costs should come out of Mr Goodwin's estate as his conduct had caused the litigation; or
- Alternatively, each side should bear their own costs as the claimants had reasonable grounds for disputing the will.
- In addition, one of the defendants argued that she had served notice under CPR rule 57.7(5)(a), which states that the court will not make a costs order against a defendant (unless it considers there to have been no reasonable grounds for opposing the will) where they give notice confirming that they do not raise any positive case, but insist on the will being proved in solemn form and, for that purpose, will cross-examine the witnesses who attested the Will.

The outcome and take away

As the defendants had withdrawn their challenge to the Will, the judge was forced to make his cost decision on only the evidence presented at trial.

The judge ruled that Mr Goodwin's conduct had not caused the litigation and that there were no reasonable grounds for challenging the Will in this case. The defendants as the unsuccessful parties were ordered to pay the costs of the successful party. The court was also of the view that the defendant who sought to rely on rule set out in CPR 57.7(5) was not able to do so as her witness statement set out a very positive case that the Will was invalid and, in any event there was no reasonable ground for requiring the Will to be proved in solemn form.

This case is a helpful reminder of the rules and principles surrounding costs in Will disputes. As made clear in this case, litigation costs in will disputes will not always be borne out of the deceased's estate. Those who wish to challenge a will should ensure that they have reasonable grounds to do so before bringing a claim as speculative claims may be costly.