IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 502 OF 2011

BETWEEN:

GLENNIS GLENDA GODOY **Claimant**

AND

MARIA BOL
NOEMI DAWSON **Defendants**

BEFORE: Hon. Chief Justice Kenneth Benjamin.

February 22, March 9 & 28, 2012.

Appearances: Mr. E. Andrew Marshalleck, SC, for the Claimant.
Mrs. Tricia Pitts-Anderson for the Defendant.

JUDGMENT

[1] Kenneth Ashton Godoy died on February 27, 2010. The Claimant, Glennis Glenda Godoy, is his only child. These proceedings are to determine the validity of the purported will of the deceased dated October 9, 2009. The first Defendant and the second Defendant are named in the said Will.

[2] On October 18, 2010, the Claimant applied for the grant of Letters of Administration for her father's estate. There following a caveat filed by the first Defendant on December 13, 2010 against the grant on the basis that a valid will existed. The first Defendant claimed to be the sole executrix of the said will, in which the second Defendant was the named 'bennefactor'; this was set out in an appearance to a warning to the caveat.

[3] The Claimant in her Statement of Claim, contested the validity of the will on three separate grounds: firstly, that the will, ex facie, was not executed in accordance with the Wills Act, Chapter 203; secondly, that the deceased lacked the testamentary capacity to execute the will; and thirdly, further or in the alternative, that, on its true construction the will did not operate to bequeath any property to the second Defendant or to appoint the first Defendant as executrix of the deceased's estate.

[4] The Claimant did not pursue the first ground and conceded on the basis of the Defendant's witnesses that the will was executed by the deceased signing the same in the presence of two witnesses present at the same time and that the said witnesses subscribed and attested to the will in the presence of the testator.

[5] The Defendants denied that the testator lacked the mental capacity to execute the will and they asserted that he was possessed of all his faculties at the time the will was executed. Further, it was averred that by the tenor of the will, the first Defendant was nominated and appointed as executrix and that the deceased's property was bequeathed to the second Defendant.

[6] The Claimant seek a declaration that the will is invalid and of no effect and an order for the grant of Letters of Administration of the estate of the deceased to her. The Defendants contrarily seek a declaration that the will is valid and an order for the grant of probate to the first Defendant.

The Evidence

[7] The facts of the case are gleaned from the witness statements and the cross-examination of the witnesses together with the will itself. Although, the first Defendant acknowledged service, she did not offer any testimony at trial nor did she appear.

[8] As a consequence of the Claimant's concession as to the will being duly and properly executed, the Court is concerned with determining the testamentary capacity of the deceased and the construction of the will itself. It can be taken as common ground that the deceased attended at the home of Isaac Johnson, a Justice of the Peace, on October 9, 2009 and signed the will in his presence and that of

Donald Roches. Mr. Roches then signed, followed by Mr. Johnson who signed and stamped the document in the deceased's presence. Subsequently, Joan Perrera, who had remained behind in the vehicle, signed the document in the deceased's presence. There is evidence of a purported typewritten copy of a will but that is of no moment as the same was only attested and subscribed by one witness, Mr. Isaac Johnson.

[9] The Claimant was born on May 27, 1961 in the Stann Creek District. Her parents, Kenneth Godoy and Gregoria Godoy nee Pandy were married at the time. She lived with them for a short time at Pomona in the Stann Creek District. Thereafter she lived with her mother until the latter left Belize for the United States of America when she was nine years old. She lived with her grandmother in Dangriga and for one year with her grandaunt in Belize City until she left Belize to live with her mother. She was then 13 years if age. She returned to reside in Belize in February 2010 after the death of her father

[10] Apart from the brief period after she was born, the Claimant's parents never lived together again. Indeed, her mother has resided in the United States of America from the time she left Belize when the Claimant was nine years old up to the present. The Claimant recalled first visiting her father in Corozal Town when she was four years old. There was no contact between them until the Claimant lived with her grandaunt in Belize City one year before leaving Belize. On the first visit, her father was at the Sea View Mental Hospital. The visits continued there at midday on weekdays for some months. After the Claimant attained the age of 18 years on her occasional visits to Belize, she visited her father at the St. John's College where he worked as a groundskeeper and lived alone in a trailer. Between visits, she called her father every three months and sometimes he would speak with her. Otherwise, she kept indirect contact with him through Ms. Isabel Haylock at the College and through her cousins.

[11] The Claimant admitted that she became aware that her father was not well about two weeks before his death. She also admitted that he never told her himself that he was retiring. There is evidence from Father Timothy Thompson of the Jesuit Community that Kenneth Godoy retired from his employment as groundskeeper at the College around 2005 but that he continued to reside in the trailer.

[12] Subsequent to the death of her father, the Claimant met with the second-named Defendant and others at the St. John's College compound. She was then informed that her father had made a will. She denied prior knowledge of the will.

[13] The Claimant's case included a document to the effect that the records of the Seaview/Rockview Hospital showed that Kenneth Godoy was admitted on February 3, 1970 and June 15, 1970 with a diagnosis of schizophrenia. There was no record of when he was discharged.

[14] Direct evidence of admission to the Sea View Mental Institution was furnished by Leonard Mortis, who worked there as a nurse during the committal of Kenneth Godoy. He stated that Kenneth Godoy was a resident of the Institution and was cared for and treated there until he went to work at St. John's College in Kings Park in 1974. He recalled seeing him and speaking with him at the College on about three occasions.

[15] The Claimant did not shed any light on her father's mental illness. She simply recalled visiting him at the Sea View Mental Institution and that he spoke very little during those visits. In addition, he did not always take her phone calls when she became an adult.

[16] Leonard Mortis worked at Sea View Mental Institution then at Rock View Mental Institution, until his retirement in 1999. He confirmed that Kenneth Godoy was never re-admitted to Sea View nor was he ever at Rock View. His recollection was that Kenneth Godoy was one of the good patients who was able to function on his own although undergoing treatment. Such was his behaviour that the witness pondered as to why the patient was at Sea View. Subsequently, when he saw him working at St. John's College, he looked fit and appeared to be doing well. He recalled that Kenneth Godoy spoke well and was fully aware of himself.

[17] Isaac Johnson, the Justice of the Peace, who witnessed the will, testified on behalf of the Defendants. In his witness statement, he said that he met Kenneth Godoy at St. John's College in around the year 2001. They spoke and thereafter developed a friendship. Their short conversations covered current topics. In the words of the witness: "He did not show any indication to me that he was senile or crazy or was forgetting things. He held rational conversations with me."

[18] In detailing the events leading up to the execution of the will, Isaac Johnson was certain that Kenneth Godoy was clear that he wished to make a will. He never sought to find out whether Kenneth Godoy could read or write, but he did witness him signing the document which purported to be a will. At the time, Mr. Johnson observed him to be okay and not senile.

[19] Father Timothy Thompson is a Jesuit priest and retired lecturer of the St. John's College and resided at that compound. He confirmed that Kenneth Godoy was employed there and resided there until his death. He often spoke with Kenneth Godoy and he found him to have presence of mind and to be coherent and logical with no lapse of memory. He, Father Thompson, did not observe any violent tendencies or any mental deficiency. He was aware that Kenneth Godoy had been institutionalized but did not know of the diagnosis of schizophrenia.

[20] The second Defendant stated that she is a teacher and that she came to know Kenneth Godoy from since she was a little girl accompanying her mother and siblings to the St. John's College compound to seek assistance. He became a friend of the family and she would visit him regularly at his trailer. Her mother performed chores for him and in turn he assisted her with school fees, uniforms, books, and food among other things. Later on, the second Defendant was permitted to drive his car and do errands for him.

[21] The second Defendant freely stated that she was unaware that Kenneth Godoy had had a mental breakdown and was institutionalized. She said:

> "Throughout the time I knew him, up until his death the Deceased was always rationale (sic) and did not seem to be like anyone who had a mental problem."

Further, she was not aware that Kenneth Godoy had any children, far less a daughter.

[22] The witness statement provided a narrative detailing the steps on October 9, 2009 when the will was executed. She stated that she visited him at his trailer and saw him writing. He then stopped writing and she continued writing at his dictation. During cross-examination, she admitted discarding the paper on which he had

written. A few days later, Kenneth Godoy handed her a typewritten document which was the will not properly executed earlier alluded to.

[23] It is the second Defendant who found the original handwritten will executed on October 9, 2009 while cleaning Kenneth Godoy's trailer subsequent to his death.

[24] During her cross-examination, the second Defendant told the Court she did not know what was schizophrenia. She also said that she supported Kenneth Godoy financially while he was alive and accepted that she was his benefactor. She at first agreed that she was his beneficiary.

Testamentary Capacity

(a) The law

[25] Although there exists at law a presumption of sanity in favour of a testator, it falls to the person seeking to propound the will to show that the testator was competent at the time of making the will. (**Halsbury's Laws of England, 3rd edition, Volume 39, para. 1299**). In the present case, the issue of the testator's sanity has been effectively invoked by the evidence as to his committal to the Sea View Mental Institution with a diagnosis of schizophrenia.

[26] In the case of **Banks v Goodfellow (1870) L.R. 5 Q.B. 549**, Cockburn, CJ laid down the relevant principles as to the requirements of testamentary capacity as follows (at p. 570):

> "It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and with a view to the latter object; that no disorder of mind shall poison his affection, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made."

This classic dictum requires the testator to be able to firstly understand that he is making a will and the consequences of such an act. Secondly he must also understand the extent of the property he is disposing of. Thirdly, he must understand and appreciate the moral implications of including or excluding any persons without his judgment being affected by any mental disorder.

[27] In **Banks v Goodfellow**, the learned Chief Justice stated that he was establishing "the measure of the degree of mental power which should be insisted upon" in cases involving the issue of mental capacity of a testator. In that case, inasmuch as the testator suffered from insane delusions which were manifested in a violent aversion to a particular person, it was nevertheless found that at the time the will was executed, he was behaving normally and he was satisfactorily capable of understanding that he was making a will and the matters affecting his estate.

[28] The test is directed towards the specific capacity of the testator at the time of the making of the will. The testamentary capacity is a question of fact to be decided by the Court.

[29] Following upon the concession by the Claimant as to the proper execution of the will, the Court begins by presuming that the testator has the requisite capacity. However, since the Claimant has a real doubt as to his capacity, the evidential burden reverts to the propounders of the will, the Defendants, to establish capacity (see: **Ledger v Wootton [2007] EWHC 2599 (Ch)**; **Key v Key [2010] EWHC 408 (Ch.)**). As stated in **Banks v Goodfellow**, the issue all the more gives rises to a real doubt having regard to the fact that the will did not name the Claimant who is the testator's daughter.

[30] The evidence as to the capacity of the testator is largely confined to the observations of the witnesses. No medical evidence was led as to the specific mental health of the testator nor as to the parameters and symptoms of schizophrenia, with which he had been diagnosed. Over and above, the fact of the testator being institutionalized for approximately four years for a mental breakdown and being diagnosed with schizophrenia, no further assistance has been offered to the Court. Generally, all the witnesses spoke of observing the testator to be

functioning like a normal, sane, rational and logical person from the time he began living and working at St. John's College up to the time of his death. Indeed, the nurse at the Institution was unable to discern any noticeable abnormality of behaviour even as far back as when the testator was institutionalized.

[31] Learned Counsel for the Claimant, sought to highlight the fact that the testator had denied to Father Thompson that he had a daughter and that he was incapable of having children. However, this is far from conclusive of the existence of a mental disorder. In addition, the Court's attention was drawn to what was described as the 'garbled' wording of the Will itself. Here again, the testator was an ordinary labourer by trade and there is some evidence that he was struggling to write his will. The evidence of Isaac Johnson supported by that of the second-named Defendant, is that the testator was firm in his understanding that he was making a will and of the contents of the will.

[32] The testator was discharged from Sea View in 1974, some 36 years before his death. He was never re-admitted to that institution or any other institution. Until his retirement in 2005, he held a steady job of some responsibility at St. John's College from the time he was discharged. Between 1974 and his death in 2010, and even prior to that while at Sea View, the testator displayed no unusual or abnormal behavioural traits. In fact, he discussed political and current affairs with Isaac Johnson and he conversed normally with Father Thompson, Leonard Mortis and the second Defendant.

[33] I am satisfied that on the weight of the evidence at the time of making the will, Kenneth Godoy was capable of having the knowledge and appreciation of the fact of and the facts surrounding his making of a will. I am satisfied he was fully aware that he was embarking on a process to dispose of his property and did act upon that intention. Accordingly, I hold that the Defendants as the propounders of the will have discharged the evidentiary burden transferred to her and the testamentary capacity of Kenneth Godoy at the time of the making of will has been established on a balance of probabilities.

Construction of the Will

[34] The second contentious issue to be resolved relates to the construction of the will of Kenneth Godoy. The document was not professionally drawn and it was handwritten. It is headed "To whom it may concern" and thereafter is set out in the form of a letter with the address of St. John's College and the date at the upper left hand side of the single sheet. It commences with "Dear Sir/Madam" and ends with 'sincerely' before the signature of the testator and the signatures of the witnesses, Donald E. Roches and Joan Perrera below. The bottom of the document carried the stamp and signature of Isaac Johnson, Justice of the Peace, with the date. The body of the document is contested. It reads:

> "I Kenneth Godoy give full approval of my bennefactor to Ms. Noemi Dawson, Including the things that I've own. I have known Ms. Dawson for many years and the reason why I'm making my will into her hand is because she is a responsible person and she will take everything into good use. If I die she will be the only one I approve to be my bennefactor. While on the other hand, Ms. Maria Bol will be my administrator. Ms. Bol has also help me a lot."

[35] It is immediately apparent that the document is directed to two named persons who are fixed with different roles – one 'as benefactor' and the other as administrators. It is common ground that there are no clear words of donation. The Claimant contends that the words do not operate to bequeath property to anyone. Contrarily, the Defendants say that the overall effect of the language is that the first Defendant is appointed as the executrix and the second Defendant is the beneficiary of the entire estate of the deceased.

[36] The general rule is that the original will is the only legitimate evidence of the intention of the testator and no evidence is admissible to show what the testator intended to have written(see: **Halsbury's Laws of England, 3rd edition, Volume 39** at para. 1445). Evidence may be led to as to circumstances which in their nature and effect, explain what the testator has written. Accordingly, neither Isaac Johnson nor Noemi Dawson can be allowed to tell the Court what the testator may have told

them as to what property he intended to dispose of in his Will, how he intended to do so or to whom he intended to bequeath his property. The Court may resort to evidence extrinsic to the will itself for the purpose of rendering intelligible a fact which would otherwise not be intelligible in the will (Ibid., para. 1445).

[37] The essence of the Claimant's submission was that the words of the will are garbled, meaningless and ambiguous, thus rendering the will void for uncertainty. It was contended that the first sentence made no sense as the testator was giving his full approval of his benefactor to the second Defendant by name and included in the same sentence reference to the things that he has owned. Then, the will goes on to state that the testator was making the will into the hand of Ms. Dawson whom he has known for many years, because "she is a responsible person" and "she will take everything into good use." It is then written "If I die she will be the only one I approve to be my bennefactor." In this regard, reference was made to the second Defendant's admission during cross-examination that she had indeed been the testator's benefactor in the dictionary sense, in that she gave help or assistance to him during his life-time.

[38] Learned Senior Counsel urged that a new meaning would have to be attributed to the mis-spelt word 'bennefactor' if one is to ascribe the meaning of 'beneficiary' which contemplates some one who gains a benefit. In sum, it was said that in its garbled state, sense could not be made of the words and the testator gave his approval of the second Defendant without giving away any property.

[39] On behalf of the Defendants, it was argued that the words cannot be construed in a piece-meal fashion but that the will has to be construed as a whole to ascertain the true intention of the testator. In this regard, it was said that the will must be looked at and used as providing its own dictionary. Learned Counsel invited the Court to note that Maria Bol was only named as an 'administrator' with no bequest being made to her. Further, the testator was aware that he was making a will and given that he referred to the things that he owned in the same sentence where he gave his approval, he must have intended to bequeath his possessions to Noemi Dawson.

[40] The general rules applicable to the construction of wills where there are no express words of donation and where the propounder seeks to imply the gift from the language used are set out in the judgment in **Towns v Wentworth (1858) 11 Moore's P.C. 526** at p. 543. The rules of construction were put thus:-

> "In order to determine the meaning of a Will the Court must read the language of the testator in the sense which it appears he himself attached to the expressions which he has used, with this qualification, that when a rule of law has affixed a certain determinable meaning to technical expressions, that meaning must be given to them, unless the Testator has by his will excluded, beyond all doubt, such construction.
>
> When the main purpose and intention of the Testator are ascertained to the satisfaction of the Court, if particular expressions are found in the Will which are inconsistent with such intention, though not sufficient to control it, or which indicate an intention which the law will not permit to take effect, such expressions must be discarded or modified; and, on the other hand, if the Will shows that the Testator must necessarily have intended an interest to be given which there are no words in the Will expressly to devise, the Court is to supply the defect by implication, and thus to mould the language of the Testator, so as to carry into effect, as far as possible, the intention which it is of opinion that the Testator has on the whole Will, sufficiently declared." (emphasis added)

The Court is therefore tasked with ascertaining the main intention of the Testator from the whole will and where there are no express words of gift to imply such words where the language used so permits.

[41] In the case of **Key v Key (1853) 4 D.M. & G 73**, Knight Bruce, LJ said (at p. 84):

> "In common with all men I must acknowledge that there are many cases upon the construction of documents in which the spirit is strong

enough to overcome the letter; cases in which it is impossible for a reasonable being, upon a careful perusal of an instrument, not to be satisfied from its contents that a literal, a strict or an ordinary interpretation, given to particular passes, would disappoint and defeat the intention with which the instrument, read as a whole, persuades and convinces is authorized and bound to construe the writing accordingly."

This passage was adopted as a guide by Hall, VC in **Sweeting v Prideaux (1876) L.R. 2 Ch. D. 413**. A somewhat similar approach to construction was adopted by Baron, VC in the case of **In re: Redfern, Redfern v Bryning (1877) 6 Ch. D. 133**. The learned Vice-Chancellor had this to say (at p. 136):

"Now, no doubt the mere letter of the Will, or any other instrument, is not to be adhered to if a contrary signification can be suggested by the whole context of the instrument. The spirit is to prevail, and the letter is not to be allowed to kill. That I take to be a plain, clear canon of construction. There is the other rule which the Court always acts upon, namely, not to impute to a testator the intention of dying intestate."

…, "There is not any case that can be referred to, that I know of, in which the mere letter has been allowed to prevail over the plain sense of the instrument."

His Lordship went on to decide the following (at pp. 137 – 138):

"I think that upon a reasonable construction of the words which the testator has used, the words which are suggested by the statement of claim ought to be read as if they were inserted in the will. If I were to do otherwise, I should be going against the canon of construction, that I am to gather the meaning of the testator from the words in which he has expressed his meaning. I am not to be deterred by any accidental omission from putting the true signification on the will, and I am not to substitute what some blundering attorney's clerk or law stationer has

written in his will, and treat that blunder as if it was the intention of the testator. I do not hesitate in the slightest degree, therefore, to adopt the rule which Vice-Chancellor Hall expressed in **Sweeting v Prideaux** that the testator must necessarily have meant what he letter of the will does not express."

[42] The will of Kenneth Godoy is hardly a model of basic grammar, syntax and employment of "*le mot juste*." At first reading, it does appear to be meaningless and garbled. However, upon reading the entire will, certain matters emerge as indisputable. Firstly, the testator set out to make a will from which it can be presupposed that he intended to bequeath his property. To conclude otherwise would be to render the will meaningless. There are no clear words of gift. Secondly, having regard to the appointment of Maria Bol as his 'administrator' which can be treated as a term of art, her role, given the words 'on the other hand', of necessity was contemplated to be different to that of the other named person, Noemi Dawson. As I see it, notwithstanding the inelegant and clumsy use of language, the spirit of the will is that the testator intended to give "the things that I've own) (meaning his possessions) to Noemi Dawson. The will goes on to say that he is making his will "into her hand" and "she will take everything into good use." By these words, he is expressing that the will is being made in her favour. From the general tenor of the will, as earlier expressed, the testator was making Noemi Dawson his 'beneficiary' notwithstanding the use of the word 'bennefactor'.

[43] In sum, without speculating, but by simply gleaning the spirit of the will from its structure, it was implied in the language that the testator intended to make Noemi Dawson his sole beneficiary while appointing Maria Bol as his executrix.

[44] Accordingly, the Court declines to make the declaration and order sought by the Claimant. The Claim shall stand dismissed and judgment is entered on the counterclaim. It is ordered that:

1. The will of Kenneth Godoy deceased dated the 9th day of October 2009 be pronounced in solemn form.

2. Probate of the estate of the said deceased be granted to the first-named Defendant, Maria Bol.

The costs of the parties shall be borne by the estate of Kenneth Godoy, deceased in the sum of $7,000.00 to the Claimant and in the sum of $7,000.00 to the Defendants.

KENNETH A. BENJAMIN
Chief Justice