IN THE COURT OF APPEAL OF BELIZE, A.D. 2014

CIVIL APPEAL No. 11 of 2012

GLENNIS GODOY

Appellant

V

(1) MARIA BOL
(2) NOEMI DAWSON

Respondents

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BEFORE:

The Hon. Mr. Justice Manuel Sosa - President
The Hon. Mr. Justice Samuel Awich - Justice of Appeal
The Hon. Madam Justice Minnet Hafiz-Bertram - Justice of Appeal

E. Marshalleck for the appellant
T. Pitts-Anderson for the respondents

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21 October 2013 and 14 March 2014

SOSA P

[1] On 21 October 2013, I agreed with the other members of the Court that the appeal should be dismissed and the order as to costs reserved until the giving of reasons for judgment in writing at a later date. I have now read in draft, and concur in, the reasons for judgment of, and order as to costs proposed by, Hafiz Bertram JA.

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SOSA P

AWICH JA

[2] I agree with the reasons prepared by Hafiz-Bertram JA for the order made by this court on 21 October, 2013 dismissing this appeal. In addition to the conclusion by this court that, there was no proof that the testator lacked mental capacity to make his last will dated, Friday, 9 October, 2009, and that there was instead proof that, he had full mental capacity when he made the will, I would like to mention that the ground of appeal on this point was misconceived. It requested this court to re-assess the evidence and make findings of facts contrary to the findings made by the trial judge. There was no real question of construction of the will. It is not the function of an appellate court to generally re-assess evidence. I agree completely that there was no uncertainty about the contents of the will. It was the intention of the testator to bequeath everything to the first respondent.

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AWICH JA

HAFIZ-BERTRAM JA

Introduction

[3] This is an appeal against the judgment of the learned Chief Justice, dated 28 March 2012, in relation to proceedings to determine the validity of a purported Will dated 9 October 2009, of the deceased, Kenneth Ashton Godoy ("the testator"). On 21 October 2013, the appeal was heard and dismissed. We promised to give our reasons in writing and I do so now.

[4] By a claim dated 29 July 2011, the appellant Glennis Glenda Godoy ("Glennis") claimed that she is the only child of the testator who died on the 27 February 2010. On 18 October 2010, she petitioned for Letters of Administration for the estate of the testator.

[5] Glennis claimed that (a) the first Defendant, Maria Bol ("Maria") in response to the petition, filed a caveat at the Registry, alleging that she had a valid will dated 9 October 2009, of the testator (b) Glennis then filed a warning to the caveat on 16 December 2010, at the Registry (c) On 10 January 2011, Maria entered an appearance to the warning and alleged (i) an interest as the sole executrix and (ii) that the second defendant, Noemi Dawson ("Noemi"), was named benefactor, in an alleged will of the testator, dated 9 October 2009.

[6] Glennis in her claim challenged the will under three grounds. The first ground was later abandoned as the appellant conceded that the will was properly executed. The two remaining grounds being (a) the deceased had a life-long history of mental illness including his confinement to the Rock View Hospital Facility for a number of years; (b) the alleged will on its true construction, did not bequeath any property to Noemi or constitute Maria as executrix of the estate of the deceased.

[7] Glennis therefore sought two reliefs: (1) that the court shall pronounce against the validity of the alleged will dated 9 October 2009; (2) a grant to her of letters of administration of the estate of the testator.

The order of the Chief Justice

[8] The trial judge, the learned Chief Justice, dismissed the claim and ordered that the will of the deceased be pronounced in solemn form and that probate of the will be granted to Maria. He also ordered cost in the sum of $7,000.00 to the claimant and $7,000.00 to the defendants, to be paid from the estate of the deceased.

The Appeal

[9] By Notice of Appeal, dated 20 April 2012, Glennis appealed against the decision of the learned Chief Justice on the following grounds:

(i) the learned trial judge erred in law and misdirected himself in finding that the will of Kenneth Godoy was not void for uncertainty;

(ii) the learned trial judge erred in law and misdirected himself in finding that on the evidence before the court that the defendants had discharged the onus of proving that the deceased had the requisite testamentary capacity when he executed the will dated 9 October 2009.

Order sought

[10] The relief sought was for (a) the order of the learned Chief Justice be set aside and (b) a declaration that the purported will of the deceased, dated 9 October 2009 is invalid and of no effect (c) an order that a grant of Letters of Administration for the estate of the deceased, be made to the appellant.

[11] **Issues for determination**

(1) Whether the deceased lacked the requisite testamentary capacity at the time of the execution of the will.

(*2) Whether the will of the deceased was void for uncertainty.*

Whether the deceased lacked the requisite testamentary capacity at the time of the execution of the will.

[12] Learned Senior Counsel, Mr. Marshalleck submitted that the learned Chief Justice erred in law and misdirected himself in holding that that testamentary capacity had been proven on the evidence before the court. He contended that there is clear and uncontroverted evidence that the testator had been subjected to unsoundness of mind in the past as he was diagnosed with schizophrenia and was institutionalized for a number of years and medically treated for this condition from 1970 to 1974 and thereafter released as part of a work program.

[13] Learned Senior Counsel, accepted that there is no direct evidence of incapacity at the date of the execution of the will but, argued that the evidence cast some doubt on the capacity of the testator and thereby displace the presumption of sanity which would have normally operated in favour of the will. As such, the defendants have to positively prove the will as the act of a competent testator.

[14] Mr. Marshalleck further contended that the burden is a heavy one for three reasons; (i) the testator had a history of unsoundness of mind; (ii) the will is garbled and irrational on its face and (iii) even on the defendants' case, the will is an inofficious one in which natural affection and claims of near relationship have been entirely disregarded. That the will disentitled Glennis, the only child of

the testator from any participation in his estate and seeks to benefit, Noemi who prepared the will.

The law on testamentary capacity

[15] The learned Chief Justice had correctly stated the law on testamentary capacity in his judgment by referring to the case of **Banks v Goodfellow (1870) L.R. 5 Q.B. 549** which is the leading authority on the subject of testamentary capacity. Testamentary capacity, was described by Cockburn CJ in **Banks v Goodfellow,** at page 570, as follows:

> *It is unnecessary to consider whether the principle of the foreign law or that of our own is the wiser. It is obvious, in either case, that to the due exercise of a power thus involving moral responsibility, the possession of the intellectual and moral faculties common to our nature should be insisted on as an indispensable condition. 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.*
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> *Here, then, we have the measure of the degree of mental power which should be insisted on. If the human instincts and affections, or the moral sense, become perverted by mental disease, if insane suspicion or aversion take the place of natural affection, if reason and judgment are lost, and the mind becomes a prey to insane delusions calculated to interfere with and disturb its functions, and to lead to a testamentary*

disposition, due only to their baneful influence - in such a case it is obvious that the condition of testamentary power fails, and that a will made under such circumstances ought not to stand. But what if the mind, though possessing sufficient power, undisturbed by frenzy or delusion, to take into account all the considerations necessary to the proper making of a will, should be subject to some delusion, but such delusion neither exercises nor is calculated to exercise any influence on the particular disposition, and a rational and proper will is the result; ought we, in such case, to deny to the testator the capacity to dispose of his property by will?

[16] At the hearing of this appeal, Learned senior counsel, Mr. Marshalleck relied on three authorities in support of his submissions which were not cited before the learned Chief Justice at the trial below. These cases are: **Re: Clare (deceased) [2009] QSC 403; Hoffman v Heinrichs, 2012 MBQB 133** and **Ouderkirk v Ouderkirk [1936] SCR 619.** All three of these authorities stated that **Banks v Goodfellow** is still the leading authority on the subject of testamentary capacity. In **Re: Clare** and **Ouderkirk,** it had been proven by the evidence that the testators had insane delusions at the time of the execution of their will and so could not have testamentary capacity. In **Hoffman**, the testator had no insane delusions and though the testator was diagnosed with schizophrenia, it was found that she had testamentary capacity at the time of the making of her will.

Burden of proof

[17] The burden of proof in probate action as laid out in **Halsbury's Laws of England, 3rd edition, Volume 39, at para. 1299** states:

Generally speaking, the law presumes sanity, and no evidence is required to prove the testator's sanity, if it is not impeached . It is however the duty

of the executors or any other person setting up a Will to show that it is the act of a competent testator, and therefore, where any dispute or doubt exists as to the capacity of the testator, his testamentary capacity must be established and proved affirmatively . The issue of capacity is one of fact . The burden of proof of sanity is considerably increased when it appears that the testator had been subject to previous unsoundness of mind , and in such a case a will should be regarded with great distrust, and every presumption should in the first instance be made against it, especially where the will is an inofficious one, for the justice or injustice of the disposition may throw some light upon the question of the testator's capacity.

[18] The above paragraph was relied upon by the learned Chief Justice in his judgment. He further relied on the cases of **Key v Key EWHC 408 (Ch)** and **Ledger v Wootton [2007] EWHC 2599** in relation to the burden of proof which show that: (i) the burden of proof starts with the propounder of the will to establish capacity and where the will is duly executed and appears rational on its face, the court will presume capacity; (ii) In such a case the evidential burden shifts to the objector to raise a real doubt about the capacity; and (iii) If a real doubt is raised the evidential burden shifts back to the propounder to establish capacity of the testator. **Hoffman,** relied on by learned senior counsel, Mr Marshalleck also shows that the propounder of the will must establish capacity in the event of suspicions in relation to mental capacity.

Situations which may raise suspicious circumstances

[19] In **Hoffman,** under the heading of 'Burden of proof', at paragraph 33, it states:

*In **Vout v Hay,** 1995 CanLII 105 (SCC), [1995] 2 S.C.R. 876, the Supreme Court referred to the three situations which may raise suspicious*

*circumstances: (i) circumstances surrounding the preparation of the will; (ii**) questions as to the capacity of the testatrix;** and (iii) circumstances showing coercion or fraud on the testatrix. The court held that where suspicious circumstances are present, the onus is on the propounder of the will to establish that the will was executed with the knowledge and approval of the testator and, if suspicious circumstances relate to mental capacity, that the testator had the capacity to execute it.*
(emphasis added).

[20] In the case at hand, questions were raised as to the capacity of the testator and the learned Chief Justice correctly placed the burden on the respondents as the propounder of the will to establish that he had the capacity to execute the will.

Standard of proof

[21] In **Hoffman**, it is stated at paragraph 34 that the standard of proof is the civil standard of balance of probabilities. Further, that the level of scrutiny of the evidence does not vary depending on the seriousness of the allegations. The learned Chief Justice in the case at hand, applied the civil standard of proof, the balance of probabilities, as can be seen by his judgment.

Evidence of suspicious circumstances raised

[22] The learned Chief Justice identified two reasons of suspicious circumstances in the case at hand in relation to the capacity of the testator. He stated that the issue of the testator's sanity had been invoked by the evidence that the testator was diagnosed with schizophrenia. The learned Chief Justice relying on **Banks v Goodfellow** stated the second reason as , *"the issue all the more gives rise to a real doubt having regard to the fact that the will did not name the Claimant who is the testator's daughter."* In **Banks**, Cockburn CJ

discussed the issue of an inofficious will as one in which natural affection and claims of near relationship have been disregarded. In the case at hand, the learned Chief Justice at paragraph 29 of his judgment stated that since Glennis had a real doubt as to the deceased capacity to make the will, the evidential burden reverts to the propounder of the will, that is the respondents, to establish capacity. The Chief Justice then considered the evidence from the respondents, in order to determine whether the testamentary capacity of the testator had been established.

Evidence of soundness of the testator's mind

[23] Learned senior counsel, Mr. Marshalleck submitted that the witnesses for the respondents failed to prove testamentary capacity at trial as they were not familiar with schizophrenia and its symptoms and could not say whether he did anything that was a manifestation of schizophrenia. Further, they were not aware that he was diagnosed with the disease.

[24] There was no medical evidence before the learned Chief Justice in relation to schizophrenia or no evidence from a medical doctor that the testator was diagnosed with schizophrenia. The extent of the evidence before the court were records from the Government of Belize in which it was noted that the testator was diagnosed with schizophrenia and that he spent four years at the Seaview Mental Hospital. Glennis, the daughter of the testator produced evidence by way of a memorandum marked "GG 8" dated 11 January 2012, from the Administrator of the Palm Center addressed to the Ministry of Health which showed that the testator was hospitalized on 3 February 1970 and 15 June 1970 and that the diagnosis was noted as schizophrenia. The Administrator also attached to the memorandum an affidavit from Leonard Mortis dated 7 December 2011, who was a previous administrator of Rockview, declaring that the testator was a patient at that hospital. There was no discharge dates on the file.

[25] Glennis, who was born in 1961 gave evidence that when she was about twelve years old she visited her father at the Sea View Mental Hospital once and thereafter she met him at the seaside in front of the hospital every weekday for a number of months until she left Belize to live with her mother in the United States. When she was about 18, she made occasional visits to Belize and would visit her father at St. John's College (SJC) where he worked and lived. She did not give any evidence in relation to the testator's mental condition during the time she visited him at SJC or spoke to him on the telephone.

[26] Mr. Mortis, a witness for the appellant, in his witness statement stated that he knew the testator for many years. He was a male nurse in the men's mental institution of Seaview Mental Institution from 1 April 1964 until 28 November 1999 and he logged in the testator when he was first committed in 1970. He stated that the testator resided in the mental institution under care from 1970 until he went to work at SJC in 1974. At paragraph 5 of his witness statement he stated that he kept in touch with the testator at SJC for a number of years thereafter and he appeared to be doing well. He also gave evidence that the testator was a good patient and was able to function on his own causing him to ponder as to the reason for his admittance at the mental hospital. Also, that when the testator was at SJC he spoke well and was fully aware of himself.

[27] Though there was no medical evidence of schizophrenia, a diagnosis of schizophrenia was noted on the records of the Rockview Hospital where the testator spent four years and this cast some suspicions on his mental capacity. Therefore, the respondents, the propounder of the will, had to prove the testator's mental capacity. The learned Chief Justice, heard evidence from three witnesses on behalf of the respondents who spoke of the testator's soundness of his mind. The witnesses Johnson, Thompson and Dawson gave evidence as to their observations and beliefs of the testator. They were not medical doctors and so could not testify as to the symptoms of schizophrenia. Their

evidence was in relation to what they observed in regards to the testator's mental capacity.

[28] In respect to Mr. Johnson's evidence, Learned senior counsel, Mr. Marshalleck submitted that the five to ten minutes conversations which he had with the testator were insufficient basis upon which he could assess the testator's mental capacity, particularly in the absence of any professional training. Mr. Johnson was a Justice of the Peace and his evidence concerned not only the testamentary capacity of the testator but, also that his will was properly executed. The evidence showed that though the conversations lasted for five to ten minutes, Mr. Johnson and the testator met regularly and spoke about a variety of topics. He met the testator in 2001 and he spoke to him regularly whenever he went to look for his stepdaughter, Deborah Domingo, who was the Dean of St. John's College. At paragraph 5 of his witness statement, he stated that: "*During our conversations, the deceased and I spoke about general things such as life, politics, females, his work, about the crime situation, about what the government was doing or what we expect the Government to do. He never told me that he had a daughter. When I spoke to him, it was about five to ten minutes on each occasion. He did not show any indication to me that he was senile, or crazy or was forgetting things. He held rational conversations with me.* Mr. Johnson's evidence also showed that the testator knew that he was making a will and that he was disposing his property to Noemi.

[29] In relation to Father Thompson's evidence, learned senior counsel, Mr. Marshalleck submitted that his belief that the testator did not suffer from any mental illness was not sufficient since there was no evidence that he had any contact with the testator at the time of execution of the will and that he lacked familiarity with schizophrenia. Father Thompson's, a Jesuit Priest residing at the Jesuit Community, SJC compound, in his witness statement stated that he is a retired Lecturer at SJC and he knew the testator who was employed as a Grounds Keeper at the SJC and to his knowledge the testator was employed in

that capacity since the late 1970's or early 1980's and retired in 2005. Further, that he resided alone on the compound in a trailer and lived there until 2010, when he took ill.

[30] Father Thompson's evidence showed that he frequently spoke to the testator during the time he resided on the compound and found him to be *friendly, respectful, approachable but reserved.* At paragraph 6 of his witness statement, he stated intimate conversations he had with the testator, in relation to his early childhood, his work life, his personal life and also his nervous breakdown for which he received treatment at the then Seaview hospital. Father Thompson was therefore, made aware by the testator himself that he had a nervous breakdown. He testified that at all times, he observed him to be in a good presence of mind, was coherent and logical and there was no lapse of memory. He further stated that, the testator "*was never inconsistent, moody or used obscene language. He never used or displayed any violence or did anything to indicate to me that he had violent tendencies or that he suffered from any mental deficiency. I verily believe that the did not suffer from any mental illness*."

[31] Father Thompson was not present at the time of the execution of the will in February of 2009 but, the evidence showed that he had contact with him from early 1980 to 2008. The testator left the SJC compound in 2010 after he got ill and went to live with Noemi in Hattieville Village. The will was executed on 9 October 2009 at a time when the testator was still residing on the SJC compound. In 2008, the year before the will was made, Father Thompson accompanied the testator to the doctor on two occasions for urinary tract infection and he observed that despite his physical presentation, he was in good presence of mind and he held coherent and logical conversations with him. It can be seen from the evidence that Father Thompson had contact with the testator for about 28 years and he displayed a sound mind throughout that time.

[32] As for the evidence of Noemi, learned senior counsel, Mr. Marshalleck submitted that she could not recognize the symptoms of schizophrenia and that her testimony serves her own pecuniary interests in having the will favourably pronounced upon. The evidence before the trial judge was that Noemi was a teacher at Bernice Yorke Institute and she knew the testator since she was a little girl as her mother, Maria who is the first defendant, cooked, cleaned and washed his clothes. She stated that they visited him regularly at his trailer at SJC compound and he assisted her and her siblings with school fees, books, uniform, food and other things. In regards to the testator's mental capacity, her evidence was that the deceased never mentioned that he suffered a mental nervous breakdown or that he was institutionalized. However, throughout the time she knew the testator up until his death, *he was always rationale and did not seem to be like anyone who had a mental problem.* Noemi's evidence was that she visited the testator regularly and when she got older she continued to do so. When the testator was hospitalized in 2010, she assisted him and he allowed her to drive his car and do errands for him or drive him wherever he wanted to go.

[33] There were two documents executed by the testator as shown by Exhibit ND "1" and Exhibit ND "2". ND "1" was typewritten and ND "2" was handwritten. Noemi's evidence as shown at paragraph 5 of her witness statement was that the testator dictated to her and she wrote the will. He asked her to sign the document but, she refused as she did not think that it was her to sign. At paragraph 9 of her witness statement, she stated that the document was later executed by the testator, in the presence of Donald Roaches and Mr. Johnson, the Justice of Peace. Ms. Perrera later signed the document. "ND 2" in fact shows that the testator signed the document and it had the signatures of two persons named as "witnesses", Donald E. Roches and Miss Jean Perrera. Further, it had the signature and stamp of the Justice of Peace, Isaac Johnson. There were four signatures on the handwritten document and Noemi was not one of them.

[34] In relation to "ND 1", Noemi's evidence showed that she was not aware that the testator had done a typewritten will, until he handed her the document which he had in an envelope. Her evidence was that she observed that it appeared to be a copy of the same will, but it was typewritten and had Mr. Ken's signature and the Justice of Peace signature. ND "1" indeed shows that the contents is the same as in the handwritten document. It was executed by the testator and there was the signature and stamp of the Justice of Peace, Mr. Isaac Johnson. Noemi had no input in the preparation of the typewritten document. Though this will was not valid because it was not properly executed, it showed that the testator made no changes to the contents of the previous handwritten will which was prepared by Noemi on the instructions of the testator.

[35] Learned senior counsel, Mr. Marshalleck relying on the case of **Chester Mclaren v Allison Pow, Civil Appeal No. 7 of 1992,** submitted that the learned Chief Justice erred and misdirected himself in finding that the observations of the lay witnesses as to the testator's behaviour were sufficient to prove testamentary capacity in light of the evidence that the testator was medically diagnosed with schizophrenia and the behaviour of the testator appeared normal even when he was institutionalized suffering from schizophrenia. He further submitted that medical evidence as to the manifestations and effects of schizophrenia was clearly indispensable in the circumstances to prove testamentary capacity. Learned Senior Counsel referred to paragraphs 13, 16 and 30 of the learned Chief Justice's judgment which will be reproduced later in the judgment.

[36] It can be seen by **Banks** that testamentary capacity is a question of fact to be decided by the court. Further, the **Hoffmann** case shows that evidence of testamentary capacity may come from experts or lay persons and where medical evidence is led, it may not be entitled to more weight than the evidence of friends and family who had the opportunity to observe the testator at the relevant time. In the case at hand, there was no medical evidence and the

learned Chief Justice, heard evidence from lay persons who knew the testator. As such, it was my view that it was proper for the learned Chief Justice to accept the observations of the lay witnesses in relation to the testator's behaviour.

[37] In **Mclaren**, it was held that the trial judge had wrongly found that testamentary capacity had been proven through the observations of lay person, in the face of medical evidence that the testator's condition might appear to a layman normal, when in reality he was not. Further, the Plaintiff did not call any medical evidence although it was alleged that the testator was a patient of a certain doctor, who would have been in a position to testify about the health of the testator. This case can be distinguished from the case at hand, as there was no medical evidence before the learned Chief Justice as can be gleaned from his judgment. The Chief Justice was not put in a position to consider both medical evidence and evidence from lay witnesses. Further, all he had was a document which says that the records at the hospital showed that the testator was admitted with a diagnosis of schizophrenia. At paragraph 13 of his judgment he stated that 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.*

[38] The evidence of Mr. Mortis established that even when the testator was in the hospital he functioned very well and there is no evidence, medical or otherwise contradicting his observations. At paragraph 16 of his judgment, the learned Chief Justice stated:

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.

[39] The learned Chief Justice at paragraph 30 of his judgment clearly stated the extent of the evidence he had before him. He said:

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.*

[40] I am not in agreement with learned senior counsel, Mr. Marshalleck that medical evidence of manifestations and effects of schizophrenia was indispensable to prove testamentary capacity in this case. The Chief Justice considered evidence that the testator had spent four years at Sea View which he left in 1974, about 36 years before his death. Also, that he was never re-admitted to that institution or any other institution. He held a steady job after he was discharged from Sea View at St. John's College until his retirement in 2005. The Chief Justice said *that between 1974 and until the death of the*

testator in 2010, and even prior to that, while at Sea View, he displayed no unusual or abnormal 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. It was obvious that the testator was functioning very well as he held on to his job for a very long time. He retired in 2005 and made his will in 2009, which is over 35 years after he left the mental hospital. In such a case, regardless of the absence of expert evidence from a medical doctor proving that the testator was in fact diagnosed with schizophrenia and explaining the conditions of such illness, the learned Chief Justice properly accepted the evidence from the lay witnesses who observed 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.

[41] In **Mclaren,** the testator at the time of making the Will was very ill and the Chief Justice had dismissed evidence from an expert witness, a medical doctor, who had treated the testator and stated in a medical report that he had exhibited signs of disorientation and dementia. The Doctor also gave evidence explaining the condition of dementia as a specific neurological condition which is a dysfunction of the cortex of the brain. In relation to the last purported will of the testator, the doctor's evidence was that in his opinion, the testator would not have been able to sign a legal document and know what he was doing. In the case at hand, the testator made his will in 2009, long before he got ill and died and there was no medical evidence that he did not know what he was doing when he made his will.

Is the will garbled and irrational on its face?

[42] The will when read in its proper context as a whole, is not garbled and irrational. The Chief Justice properly considered evidence that the testator was an ordinary labourer by trade and that he was struggling to write his will. Further,

he properly considered the evidence of Johnson supported by Noemi which showed that the testator was firm in his understanding that he was making a will and of the contents of the will. This will be discussed further under the second issue for determination.

Testator disregard for near relationship

[43] Learned senior counsel, Mr. Marshalleck contended that the deceased was not a competent testator because his will is an inofficious one in which natural affection and claims of near relationship have been entirely disregarded. He submitted that the will disentitled the only child of the deceased from any participation whatsoever in the estate of the testator and seeks instead to benefit Noemi who prepared the will.

[44] Mr. Marshalleck submitted that there was unchallenged evidence before the learned Chief Justice that the deceased continued in the belief over the years that the Claimant, Glennis was not his child. He referred to the evidence in the witness statement of Father Thompson where he stated that the testator told him , *that the Claimant was not his daughter because he could not have children and as far as he was concerned she was not in the picture.* Further that, in cross-examination, Father Thompson testified that the deceased told him again after the year 2000 that Glennis was not his daughter as he had an operation and the doctor told him that he was incapable of having children.

[45] The learned Chief Justice at paragraph 31 of his judgment stated that Mr. Marshalleck sought to highlight the fact that the testator had told Father Thompson that he did not have a daughter and was incapable of having children. He then went on to say that, "*However, this is far from conclusive evidence of the existence of a mental disorder*." The learned Chief Justice did not elaborate any further on this point. However, he considered the evidence as to the relationship of the testator with Glennis who did not have much contact

with him and the close relationship with Noemi who was there for him until his death.

[46] Learned senior counsel, Mr. Marshalleck further contended that when someone who is diagnosed with schizophrenia says that he does not have children and there is evidence that he has a child, the issue arises as to whether he is labouring under an insane delusion. As such, he submitted, this would impact on his testamentary capacity to consider the interest of his child when making the disposition. He further submitted that the fact that the deceased was diagnosed with schizophrenia and institutionalized demonstrates that he was prey to delusions. He relied on the Queensland case of **Re: Clare (deceased)**, where the court at paragraph 58 states:

> *58. Justice Mandie, in a recent decision in the Supreme Court of Victoria, has reviewed numerous authorities since Banks v Goodfellow. It is, I think, unnecessary for the resolution of this proceeding to go further than Banks v Goodfellow.* ***The question is did the delusions to which the deceased was prey prevent her mind from acting "in a natural, regular and ordinary manner"?*** *Because the disposition of all the property of which she stood possessed at the time when she executed the document dated 10 August 2006 to her friend was not bizarre or irrational of itself, it has been necessary to examine more closely than might otherwise have been called for the evidence about her approach to her family personified in her brother, Dr. Peter Graf and also to Andrew Johansson.*

[47] Learned Counsel, Mrs. Anderson, in response submitted that there was absolutely no evidence in the court below that the testator suffered from any insane delusion. Further, that there could have been several reasons why the testator could have made the statement that Glennis was not his daughter and

in the absence of medical evidence that he suffered from any insane delusion, that evidence cannot have affected him at the time of the making of the will.

Discussion

[48] In the case at hand, the evidence was by way of records from the Rockview hospital that the testator was diagnosed with schizophrenia. There was no medical doctor who was called to give evidence. However, the parties accepted the diagnosis. In **Hoffman,** no medical doctor was called to give evidence and the evidence of a diagnosis was by way of a letter from a psychiatrist who had treated the testator in which he described her condition as a long standing schizophrenic illness and that she was on medications. The court, looked at testamentary capacity at the time of the making of the will and found that the testator knew what she was doing when she was making the will. In the case at hand, the learned Chief Justice also looked at the testator's testamentary capacity at the time he made the will and found that he knew what he was doing.

[49] **Hoffman** shows that a testator who had been diagnosed with schizophrenia can have testamentary capacity. The testator, Ann who was born in 1919, had suffered from schizophrenia for most of her adult life. There was no evidence as to when she was diagnosed with schizophrenia but, there was evidence that she was a patient in Selkirk Mental Hospital in 1957. She also spent some time in Eden Mental Health Centre in 1970 and again for two months in 1979, after the death of her husband. When she was discharged from Eden in 1979, she went to live in a personal care home. There is evidence however, by way of a letter from her doctor, a psychiatrist at Eden, written to Ann's niece in December 1979, in which he described her condition as a long standing schizophrenic illness and that she was on medications. The doctor was not called to give evidence and no other doctor was called by either of the parties. The doctor in the letter, as shown at paragraph 4 of the judgment stated that:

> *This lady shows typical symptoms from a long-standing schizophrenic illness. There is very little that one can do for her. Her condition is stable. She is no problem. Her emotions are rather flattened, anergic. I think placement in a nursing home is indicated on a long term basis, where she should be encouraged to do as much as she can for herself, as well as involvement in occupational therapy and stimulation by going out and visiting at times.... I would be prepared to see her at any time here at the Centre if her family doctor feels it is indicated; if there is any change in her condition I would reassess her and perhaps modify medications.*

[50] Ann did not require further hospitalization as her illness was treated with medication. However, since it was a fact that she suffered from schizophrenia, it had led to the question about her capacity to execute a will.

[51] Ann had seven siblings and the evidence established that she had a very close relationship with her twin brother, Jake who took the most interest in her and the most responsibility for her. In 1980, Jake drove Ann to a Company in Winnipeg to have a will drawn. The will was drafted by a lawyer on the instructions of Ann who said that her entire estate was to go to her brother and if he pre-decease her, to his son, Warren. The applicant Rudy Hoffman, Ann's nephew challenged the validity of the will alleging suspicious circumstances surrounding its making, Ann's lack of testamentary capacity and undue influence exerted upon her by Jake.

[52] Greenberg J in his judgment stated that conclusions cannot be drawn regarding capacity simply from the fact that a person suffers schizophrenia, especially when the person is being treated. He said that whether Ann had testamentary capacity had to be determined on the basis of the evidence as to her abilities at the time the will was executed.

[53] The learned judge assessed the evidence and found that Ann knew what she was doing when she executed her will and she did so on her own free will. The evidence established that she had a close relationship with her twin brother Jake and his children. On the other hand, the relatives who testified for the

applicant Rudy Hoffman had little to do with their aunt, especially around the time the will was executed and therefore, they could not provide any insight into her mental state at that time.

[54] The learned judge referring to **Banks v Goodfellow** said that one of the things that may raise suspicions about the capacity of a testator is whether the will is an inofficious one. He stated that it was not surprising that Ann chose Jake as her sole beneficiary as he was the family member with whom she had the closest bond and he took the most interest in her welfare. Further, it was not surprising that she chose Jake as her alternate beneficiary as he was Jake's youngest son who was still living at home with him and farming with his father when the will was executed. The learned judge said that he was satisfied that it was more probable than not that Ann knew exactly what she was doing when she signed her will and her illness did not deprive her of the capacity to do so.

[55] It can be seen in **Hoffman** that the the testator made provision in her will for her favourite brother only, and not all her siblings. The will however, was not found to be inofficious as it had been proven on a balance of probabilities that the testator knew what she was doing. In the case at hand, it has been proven that Noemi had a very close relationship with the testator whom she knew from since she was a child. She visited him regularly and did errands for him until his death. There was no evidence that she had anything to do with the contents of the will because of the fact that she wrote the will. The evidence established that she wrote the will on the instructions of the deceased. The appellant, although being the daughter of the deceased, had little contact with him as shown at paragraphs nine to eleven of the learned Chief Justice's judgment. Glennis lived with the testator only for a brief period after she was born. After her parents separated they never lived together again. She lived in the United States and met the testator occasionally whenever she visited Belize. It has been established also before the learned Chief Justice that the testator knew what he was doing when he made his will.

No evidence of insane delusion

[56] There was no evidence before the learned Chief Justice that there was the existence of a delusion in the mind of the testator, at any time, and in particular, at the time of the making of the will. The evidence of Father Thompson that the testator told him that Glennis was not his daughter was not sufficient to prove that he suffered from insane delusion. Further, Father Thompson had not seen the testator around the time he executed the will so it cannot be said that the testator suffered from an insane delusion at the time he made the will. For argument sake, even if there was an existence of a delusion, this is not sufficient to overthrow the will, unless the delusion is such as was calculated to influence the testator in making it. See **Banks v Goodfellow** at page 571. As shown above, the evidence as examined by the Chief Justice showed that Glennis did not have a close relationship with the testator. On the other hand, Noemi had a very close relationship with the testator from since childhood until the death of the testator.

[57] The case at hand is distinguishable from **Re Clare** and **Ouderkirk** which were relied on by learned senior counsel, Mr. Marshalleck. The evidence in those authorities clearly show that the testators were suffering from insane delusions. In **Re:Clare**, the testator was diagnosed with schizophrenia and she had psychotic delusions about evil angels. The doctor who had treated Clare, in his evidence stated that at the time Clare wrote her will, she had active symptoms of psychosis. In **Ouderkirk,** it was established by the evidence that the testator had insane delusions about his wife, who was about seventy years old, in the nature that she was of immoral character and entertained men for immoral purposes which were present on the date of the making of the will which affected his mind so that he could not rationally take into consideration the interest of his wife.

[58] In **Re Clare**, the testator, Clare who died in 2008, by committing suicide left a document headed "This is the Last Will and Testament of me, Dana Clare.." dated 10 August 2006, in which she appointed her long time friend Luan Danaan as executrix and trustee of her estate and bequeathed certain property to Luan. Clare was unmarried and had no children or other dependents. Her brothers Peter Graf and Michael Graf applied for letters of administration of her estate on the basis that she did not have the requisite testamentary capacity on 10 August 2006. Luan propounded the document of 10 August 2006 in the proceedings as the last will and testament of Clare.

[59] Clare, had been subjected to an Involuntary Treatment Order ("ITO") under the Mental Health Act from March 2006 which continued until her death. She was diagnosed with schizophrenia and there was some evidence that there was a family history of mental instability and Clare had psychotic delusions about evil angels. The court relying on **Banks v Goodfellow** stated that the issue for the court was, "..did the delusion to which the deceased was prey prevent her mind from acting "*in a natural, regular and ordinary manner"*? In other words, whether Ann's mind was so affected by her psychotic delusions that she was unable to weigh the various claims of her family and friends and make a rational decision about the deposition of her estate.

[60] At the trial, there were expert evidence and evidence from lay persons who were relatives and friends of Clare. The evidence from some of her friends established that Clare expressed unhappiness with her brother Peter, a psychiatrist, and his part in her ITO as she wanted to have the ITO discontinued. Peter, however, kept in close contact with his sister and took care of her financially.

[61] The evidence about Clare's testamentary capacity was voluminous as there were extensive medical records and also, writings from Clare herself, who was a prolific writer of emails and prose. She had also written many suicide notes

and spoke of suicide frequently. She had many suicide apparatus around her property. Dr. Gynther who had treated Clare from 2 March 2006 until her death, stated in his report that at the time Clare wrote her will, she had active symptoms of psychosis. She believed that evil angels were involved in keeping her on an ITO and on treatment with anti-psychotic medication. She believed that her brother Peter, was being influenced by evil angels and had betrayed her trust when he sought treatment for her. Dr. Gynther's stated that Clare had no insight into her diagnosis of schizophrenia, no insight into her symptoms or her need to take anti-psychotic medication. Clare was convinced that she was having spiritual experiences and was unjustly treated with anti-psychotic medication. He stated that her lack of insight deprived her of the capacity to understand that her brother had acted in her best interest.

[62] The court found that Clare's mind was so encumbered that she could not make a rational decision about the disposition of her estate. As such, Clare did not have testamentary capacity to make the document of 10 August 2006 as her will. As a consequence, the court ordered that letters of administration on intestacy should issue to her brothers Peter Graf and Michael Graf.

[63] Likewise in **Ouderkirk,** the deceased executed his will on 18 October 1932 and there was overwhelming evidence that he had delusions about his wife from the year 1928. The wife was about seventy years old and she had borne him eleven children. The delusions were to the effect that his wife was of immoral character and entertained men for immoral purposes. There were two strange provisions in the will of the deceased as he left $5. a year for his wife and that she was to be buried in a different burial plot although they had a family plot and only the testator was buried there.

[64] Kerwin J looked at the question as to whether these delusions "*were of such a character that they could not reasonably be supposed to affect the disposition of his property*." The learned judge stated that that the leading case

on the subject is **Banks v Goodfellow** and applied the principles therein. Kerwin J weighed evidence called by the executor which showed the deceased was capable of doing business and was quite normal and evidence from a medical doctor and the daughter of the deceased which showed that the deceased was laboring under delusions with reference to his wife. Dr. Gormley, who was the family physician observed the delusions in 1928 and was prepared to certify that the deceased be sent to an asylum but the family decided not to move him from his home. The daughter testified that she saw the deceased the day he made the will, the day before and after he made the will, and on each of those occasions the deceased was laboring under the same delusions in relation to his wife. The court said that the evidence called by the executor cannot prevail against the evidence of the doctor and the daughter. It was held that the delusions were present on the date of the making of the will which affected the testator's mind so that he could not rationally take into consideration the interest of his wife.

[65] In the case at hand, there was no evidence before the learned Chief Justice that the testator had any insane delusions on the day of the making of the will or at all. As such, it cannot be said that his mind was prey to some insane delusion . The evidence established that the testator knew what he was doing.

Conclusion

[66] In my opinion, the learned Chief Justice properly considered the evidence that was before him and was justified in finding that the testator was capable of having the knowledge that he was making a will and was embarking on a process to dispose of his property. As such, the learned Chief Justice was justified in holding that the respondents as the propounder of the will had discharged the evidentiary burden transferred to them, and had established on a balance of probabilities the testamentary capacity of the testator.

Whether the Will is void for uncertainty

[67] Learned senior counsel, Mr. Marshalleck submitted that the will is void for uncertainty as (i) on a true construction of the will there was no gift to Noemi nor was there any valid appointment of Maria as executor of the will. Further, that the will is garbled, meaningless and impossible to put a rational meaning to the words used in the will. He submitted that the first duty of the court of construction is to ascertain the language of the will, read the words used and ascertain the testator's intention from them. Further, as a general rule, the court may not give effect to any intention which is not expressed or implied in the language of the will.

[68] Learned senior counsel, submitted that the learned Chief Justice having started from the proposition that the testator intended to make a will and so intended to bequeath property, proceeded to find a spirit of the will from its structure and then to imply a gift from that spirit. He further contended that the spirit and the intention of the will which the learned Chief Justice sought to give effect to, are not derived from the words used in the will but, from the fact of the existence of the will and a phantom spirit supposedly sifted from the structure of the document.

[69] The will which is in letter form and handwritten will be reproduced in its entirety below:

To whom it may concern

St. John's College,
Friday October 9, 2009
Belize City, Belize

Dear Sir/Madam.

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 am 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 benefactor. While on the other hand, Ms. Maria Bol will be my administrator. Ms. Bol has also help me a lot.

Sincerely

(Signature of Kenneth Godoy)

Kenneth Godoy (Signature and stamp)

ISAAC JOHNSON

Witnesses *Justice of the Peace*

10/9/09

*Donald E. Roches (*Signature)

Miss Joan Perrera (Signature)

[70] The learned Chief Justice relying on the case of **Towns v Wentworth (1858) 11 Moore's P.C. 526** at page 543 stated that the court was 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. The learned Chief Justice further relied on the cases of **Key v Key (1853) 4 D.M. & G 73; Sweeting v Prideaux (1876) L.R. 2 Ch. D. 413** and **In Re: Redfern, Redfern v Bryning (1877) 6 Ch. D. 133,** which establishes that on the construction of a will, the spirit of the will can be strong enough to overcome the letter, if a contrary intention is shown upon reading the whole document.

[71] The learned Chief Justice read the entire will of the testator and at paragraph 42 of his judgment, he said:

> 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'.*

[72] In paragraph 43, he concluded by saying, "*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."*

[73] The learned Chief Justice in my opinion, properly concluded that the testator intended to make Noemi his sole beneficiary and Maria his executrix. Though there was no clear words of donation, the testator used words like *"the things that I've own",* making his will *"into her hand" and "she will take everything into good use*." It was proper for the learned Chief Justice to conclude that by these words, the testator was expressing that the will is being made in Noemi's favour. I am not in agreement with learned senior counsel,

Mr. Marshalleck that the spirit and the intention of the will, which the learned Chief Justice sought to give effect to, were not derived from the words used in the will. The learned Chief Justice read the whole will and carefully considered the words used in the will as can be seen at paragraph 42 of his judgment.

[74] It is a general rule that in relation to all wills, ordinary words are to be first read in their grammatical and ordinary sense and legal and technical words are to be read in their legal and technical sense, unless it appears from the context of the whole will that the testator intended a different meaning to be given to the words. See **para 243** of **Halsbury's Laws of England 5th edition, Volume 102**. Also, see the cases of **Seale-Hayne v Jodrell [1891] AC 304** at 306, HL, per Lord Herschell**; Perrin v Morgan [1943] AC 399** at 421, **[1943] 1 All ER 187** at 197-198, HL, per Lord Romer.

[75] In the case at hand, the word, 'bennefactor' appeared twice in the will and it is clear that upon reading the whole will, the testator intended to place a different meaning to this word and not the literal meaning of the word 'bennefactor' (benefactor). It is also clear that the testator intended to place a different meaning to the word 'administrator'. Learned senior counsel, Mr. Marshalleck interpreted the word 'bennefactor' in its ordinary and grammatical sense, which by definition is a person who gives support. He submitted that "*The deceased therefore gives approval of a person who gives support to Ms. Dawson. The deceased then goes on to include in that approval all the things that he has owned. This makes no sense."* Learned senior counsel applied the literal meaning to the word and this led to the absurdity. The learned Chief Justice on the first reading of the will also said that the will appeared to be meaningless and garbled. It is obvious that he said this because the literal meaning was given to the words used in the will. However, the learned Chief Justice having read the will as a whole, said that matters emerged indisputably. That is, the intention of the testator was to make a will and bequeath his property, make Noemi his beneficiary and Maria his administrator. In my view, it was proper for the learned Chief Justice, having collected the intention of the

testator from the whole will, to **not construe** the word 'bennefactor' and 'administrator' in their ordinary sense. A testator's intention is collected from the whole will and any evidence properly admissible, and the meaning of the will and all other parts of it is determined in accordance with that intention. See **paragraph 224 of Halsbury's, 5th edition, Volume 102.**

[76] Learned senior counsel, Mr. Marshalleck submitted that the first duty of the court of construction is to ascertain the language of the will, to read the words used and ascertain the testator's intention from them. Further, where the will is in writing, the court has to look at the meaning of the words used in that writing. He relied on **Halsbury's Laws of England, 5th edition, Volume 102, at para. 225,** which states:

> *225.* ***Ascertaining intention****. The first duty of a court of construction is to ascertain the language of the will, to read the words used and to ascertain the testator's intention from them. Unexpressed mental intentions are irrelevant. Where the Will must be in writing, the only question is what is the meaning of the words used in that writing. The expressed intention is in all cases taken as the actual intention, whatever the testator in fact intended, and as a general rule the court may not give effect to any intention which is not expressed or implied in the language of the will.*

[77] It is obvious, in my respectful view, that learned senior counsel, Mr. Marshalleck, relying on paragraph 225, applied the literal meaning to the words used in the will without any application to the other rules of construction of wills. In applying the literal meaning to the word 'benefactor', which means a person who gives support, the will made no sense to him. As such, learned senior counsel submitted that the will is obscure, garbled and meaningless. The learned Chief Justice looked at other rules of construction which he expressed as being the spirit of the will. The principle is that where the intention of a testator is shown, the mode of the expression of the intention, and the form and the

language of the will are unimportant. A court can also take into consideration whether the will was drawn by a skilled draftsman or by the testator himself which guides the court as to the force to be given to technical words. In the case at hand, the Chief Justice had evidence before him which showed that the testator dictated the wording of the will and that he was a groundskeeper. The learned Chief Justice read the entire will and found the intention of the testator and as such, he did not place any importance on the poorly drafted will. He said that , "*The will of Kenneth Godoy is hardly a model of basic grammar, syntax and employment of "le mot juste*." See **Halsbury's Laws of England, 5th edition, Volume 102, paragraph 226,** which shows how a will should be construed if the intention is shown. It states:

> **226. Unimportance of form if intention shown.**
>
> *As a rule, a will is generally construed in the same manner as any other document, except that, in the case of a will, if the intention is shown, the mode of expression of that intention and the form and language of the will are unimportant. Thus the want of the technical words which are necessary in some instruments for the purpose of giving expression to intention, or any error in grammar, or the want or inaccuracy of punctuation marks, is immaterial; in all such cases a benevolent construction is adopted. Whether the will appears to have been drawn by the testator himself or by a skilled draftsman on his behalf is taken consideration, and this may guide the court as to the force to be given to technical words. In the former case the testator will be supposed to use words in a popular and not in a legal sense, although in both cases the same principles of construction are applicable.*

[78] Further, the words of the will are given that meaning which is rendered necessary in the circumstances of the case by the context of the whole will as shown at **paragraph 227** of **Halsbury's Laws of England, 5th edition, Volume 102,** which states:

227. Meaning of words used.

For the purpose of ascertaining the intention, the will is read, in the first place, without reference or regard to the consequences of any rule of law or of construction. The words of the will are given that meaning which is rendered necessary in the circumstances of the case by the context of the whole will, the particular passage concerned being taken together with whatever is relevant in the rest of the will to explain it. The will itself is taken as the dictionary from which the meaning of the words is ascertained, however inaccurate that meaning would be in ordinary legal use. It would seem that the admissibility of extrinsic evidence, including that of the testator's intention, to assist interpretation of the language used is also part of the 'dictionary principle'. Relative terms, such as 'residue' or 'survivor', and other terms needing a context to make them intelligible, may be explained only by the context.

Conclusion

[79] The learned Chief Justice, in ascertaining the intention of the testator, gave the words used by the testator in the will, the meaning which was necessary taking into consideration the context of the whole will. In my opinion, he properly concluded that it was implied in the language of the will that the testator intended to make Noemi his sole beneficiary and Maria his executrix. Thus, the will was not void for uncertainty.

Order

[80] It is for these reasons that I agreed that the appeal should be dismissed and the order of the learned Chief Justice upheld as shown in paragraph 8 above. The parties are entitled to the cost as ordered by the learned Chief Justice, that is, the sum of $7,000.00 to the appellant and $7,000.00 to the respondents, to be paid from the estate of the deceased.

I would further order that Glennis, the appellant, pay to the respondents costs of this appeal, to be taxed, if not agreed within twenty one days of this judgment. I would order that this order as to costs should be provisional in the first instance, but becomes final and absolute on a date being seven full days after the delivery of reasons for judgment, unless application for a contrary order is filed before that date. I would also order that if such an application is filed, the matter of costs be decided by the court on written submissions to be filed and exchanged within 15 working days from the date of filing of the application.

_____
HAFIZ-BERTRAM JA