

**IN THE SUPREME COURT OF BELIZE, A.D. 2007****ACTION NO. 647 OF 2004****BETWEEN****DAISY WATSON****CLAIMANT****AND****ALEXANDER WATSON****DEFENDANT****CORAM: Hon Justice Sir John Muria****Hearing: 22 May 2007****Judgement: 10 October 2007***Dr. Elson Kaseke for the Claimant**H. Elrington Esq. for the Defendant***JUDGMENT**

*WILL – Letters of Administration granted – Will subsequently discovered – probate of will granted – executor appointed by the testator under the will – whether Letters of Administration be revoked – court’s power to interfere with decision of testator – allegation of testator’s mental incapacity to be properly proved – allegation of fraud not to be pleaded unless clear and sufficient evidence to support it.*

**MURIA J:** At the conclusion of the hearing in this case on 22 May 2007, the Court directed Counsel for the parties to make their closing submission in writing within one week. To date, the Court had only received the closing written submission from Counsel for the Claimant. No written submission has been received on behalf of the defendant as yet. That is regrettable. The Court, however, cannot wait *ad infinitum*. It must proceed to consider its decision in the case and do justice to the parties.

***Brief background***

The claimant, Daisy Watson, is the sole executrix named in the last Will and Testament of Emeline Watson (deceased) who died in Belize City on 21 December 2000. The Will was duly executed on 28<sup>th</sup> April 1999, naming the claimant as the sole beneficiary under the Will. At the time of her death, the deceased was survived by three children, namely Daisy Watson (claimant), Alexander Watson (defendant) and Ethlin Dziubanek.

However, following the death of the deceased, the defendant filed an application for a grant of Letters of Administration and was granted to him on 17 July 2001 by the Court to administer the estate of the deceased. Under that grant of Letters of Administration, the beneficiaries are Daisy Watson (claimant), Alexander Watson

(defendant) and Ethlin Dziubanek. It was after the grant of the Letters of Administration to the defendant, that it became known that the deceased did not die intestate, rather she died leaving a Will, executed in favour of the claimant, as the sole executrix and beneficiary under it.

Having discovered the Will, the claimant proceeded to take the necessary steps to obtain probate of the Will. This she did and on 14 May 2002 she was granted probate with the Will annexed of the estate of the deceased.

***The claimant's claim***

The claimant has brought these proceedings seeking to have the order granting the Letters of Administration to the defendant 17<sup>th</sup> July 2001 revoked. By her claim before the Court, she claims the following orders:

- 1. An order of the Court revoking the Grant of Administration No. 107 of 2001 granted to Alexander Watson dated the 17<sup>th</sup> day of July 2001 in the estate of Emily Watson, deceased, on the basis that a Will dated 28<sup>th</sup> day of April 1999 has been found and probate of the said Will was granted to Daisy Watson on the 14<sup>th</sup> day of May 2002.***
- 2. An order of the Court pronouncing in favour of the Will.***

*3. An injunction preventing the defendant, whether by himself, his servants or agents whatsoever from entering upon, remaining or in anyway dealing with any real or personal properties of the deceased, in particular Block 24, Parcel 2891 in the society Hall Registration Section, Cayo District, Belize.*

*4. Costs*

*5. Further or other relief.*

It is the claimant's case that the last Will and Testament of the deceased having been duly proved, Probate was granted to her. She is the sole executrix and beneficiary of the deceased's estate. The order granting Letters of Administration to the defendant should be revoked.

*The defendant's case*

Despite the existence of the Will, the defendant does not accept that the deceased made a Will in favour of the claimant alone as claimed. The defendant maintains that the deceased died intestate and that there are three beneficiaries to the deceased's estate.

The defendant accepts that there are now two grants in existence over the same deceased's estate. However, he maintains that the Grant of Letters of Administration made on 17 July 2001 is first in time and should prevail.

***The deceased's Will***

There can be no dispute anymore that the deceased died leaving a Will dated on 28 April 1999 and that the said Will named the Claimant as the sole beneficiary and executrix under it. There is no dispute that the said Will was proved and a grant of probate with a Will annexed was issued out of the Supreme Court on 15 May 2002 (Grant of Probate No. 53 of 2002) to the Claimant.

The suggestion by the defendant before this Court is that the deceased was old and not of strong mental faculty at the time she made the Will. This is not an issue that I need to deal with here. If the defendant is to rely on this line of claim, then he would have to properly plead it in his defence and evidence adduced by both sides to either prove or rebut it. In any case, proper evidence would have to be adduced by both parties to determine the mental capacity of the deceased at the time of making the Will. The evidence before the court is insufficient for this purpose.

See *Chester McLaren -v- Allison Pow* (14<sup>th</sup> May 1993) Court of Appeal of Belize, Civ. App No. 7 of 1992.

The choice which the Court has to make in this case, is between the Grant of Letter of Administration granted to the defendant and deceased's Will which was probated. Thus this case is to be decided on that limited basis, and as reflected in the orders sought by the Claimant.

In law, that grant of probate is evidence of an official recognition of the validity of the testator's Will and the authority of the executor to administer the deceased's estate. See *Griffiths v Hamilton* (1806) 12 Ves. 298.

### ***Purported Will produced by the Defendant***

At the trial, the Defendant sought to produce from his possession a piece of paper which he called the "First Will" of the deceased. The document was not part of the Defendant's discovered documents. However, out of the need to justly resolve the differences between these disputing children of the deceased, the court allowed the defendant to refer to the so-called "First Will." It became obvious that the document could not amount to a Will in law as it did not satisfy the requirements of the *Wills Act* (Cap. 203) of the Laws of Belize, in particular, section 7 which

sets out the manner of executing a Will. Mr. Hubert Elrington of Counsel for the Defendant, very properly conceded that the document could not be called a Will.

In any event, any reliance by the defendant on the so-called "First Will" runs counter to the whole crux of his case, that the deceased died intestate. That is the basis upon which he opposes the claimant's claim in this case. In my view, this only goes to weaken the defendant's position, not only in this case, but also the basis upon which the defendant obtained the Letters of Administration on 17 July 2001.

***Which Grant Should Prevail?***

The grant of Letters of Administration to the Defendant on 17 July 2001 was done on the basis that the deceased died without leaving a Will. That, as we now know, is not correct. The deceased died leaving a Will which had been probated on 15 May 2002. The question for the court to answer, in this case, is can the grant of the Letters of Administration on 17 July 2001 by the Court supercede a duly executed Will?

The law in this area is settled. The legal representative of the deceased is the executor appointed under the Will. The executor/administrator appointed under a

Letters of Administration cannot take the place of the Will unless that executor cannot or is unwilling to act as executor, as in the case of *The Thomas and Agnes Foundation v Carvel & Anor* [2007] EWHC 1314 (Ch). Therefore, if the Will of a deceased is proved and allowed after a Letters of Administration have been granted, the Letters of Administration must be revoked unless before such revocation, an application and challenge the probate of the Will has been filed in Court. See *Bidie (Deceased), In re Bidie v General Accident Fire and Life Assurance Corporation Ltd & Others* [1948] 2 All ER 995.

There was no application to challenge the probate of the deceased's Will in this case, nor was there any evidence to show that the Claimant was unable or unwilling to act as executor under the Will.

The general position is that the deceased deliberately chose his executor and the Courts are cautious in interfering with the actions or decisions of testators. The Court has no inherent jurisdiction to interfere with the testator's decision by ordering removal of the executor appointed under the Will. See *Re Ratcliff* [1898] 2 Ch 352 at 356; *Re Agnew Estate* (1941) 3 W.W.R. 723; *The Thomas and Agnes Foundation v Carvel & Anor* [2007] EWHC 1314 (Ch); and *Denise Hyde Card v*



*Fredrick George Hyde Jr and Russel Dane Hyde* (30 August 2007) Supreme Court of Belize, Claim No. 560/2006.

### ***Allegation of Fraud***

The defendant's additional position is that the deceased died intestate or in the alternative, the Will which the Claimant is relying upon was a fraud. The evidence is conclusive that the deceased died testate.

As to fraud, there is not a scintilla of evidence before the court that points to any suggestion of fraud on the part of the Claimant or anybody in the making of the Will. The Will was signed by the deceased and witnessed by Josephine Cadle and Luis Torres. The court rejects the assertion of fraud in this case. See *Belize Airports Authority v UETA Ltd of Belize* (21 June 2001) Court of Appeal of Belize, Civil Appeal No. 17 of 2000 where the Court reiterated that allegations of fraud should not be pleaded unless there is clear and sufficient evidence to support it.

### ***Conclusion and Order***

This judgment is concerned with the issue as to whether the Grant of Letter of Administration made by the Court on 17 July 2001 should be revoked following the discovery of the deceased's Will dated 28 April 1999 which was probated on

15 May 2002. The Court has already stated that the Will having been discovered and probated, it should prevail and the grant of Letters of Administration dated 17 July 2001 to the defendant should be revoked.

In the light of the evidence before the Court, the orders sought by the Claimant should be granted. The Court orders:

- 1. The Grant of Letters of Administration No. 107 of 2001 dated 17 July 2001 in favour of the Defendant is hereby revoked*
- 2. The Will of the deceased dated 28 April 1999 and which was probated on 15 May 2002 in Grant of Probated No. 53 of 2002, is valid and of force and effect for the administration of the estate of the deceased.*
- 3. The Claimant shall have her costs of this action to be taxed if not agreed.*

Order accordingly.

Hon Justice Sir John Muria

