Trinity Term
[2025] UKPC 26
Privy Council Appeal No 0079 of 2023

JUDGMENT

Gregory Pascall (Respondent) *v* Aneisa Graham (Appellant) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Briggs
Lord Leggatt
Lord Richards

JUDGMENT GIVEN ON
19 June 2025

Heard on 22 May 2025

Appellant
Keston McQuilkin
Wayne Smart
(Instructed by Sheridans Solicitors LLP (London))

Respondent
Margaret Rose
Dana-Marie Smith
(Instructed by LEX Caribbean (Trinidad))

LORD BRIGGS:

1. Mr Carl Cox died at home in Madeira Street, Trinidad on 23 December 2012. By his purported last will dated 6 January 2009 he appointed the respondent Gregory Pascall to be his executor and left the whole of his estate (subject to payment of debts and expenses) to the Eternal Light Community of Tunapuna, a religious charity associated with the Roman Catholic Church. He was survived by three children, but left nothing to any of them.

2. When Mr Pascall applied for probate of the will, the deceased's daughter, the Appellant, now called Aneisa Graham, opposed probate on the three grounds: (i) the will was not duly executed; (ii) want of knowledge and approval; and (iii) undue influence. The probate claim was tried by Kangaloo J in the High Court of Trinidad and Tobago in January 2017. By her judgment delivered orally in June 2017 (following written submissions), she refused probate on grounds (i) and (ii), ground (iii) having been abandoned during closing submissions.

3. Mr Pascall appealed. After a hearing in November 2022 the Court of Appeal (Soo-Hon, G Smith and Dean-Armorer JJA) reversed the judge and found in favour of the will by a judgment handed down in April 2023. Mrs Graham now appeals to the Board, relying only upon her original ground (ii), namely want of knowledge and approval.

4. There is no significant dispute about the law applicable to want of knowledge and approval, which is the same in Trinidad and Tobago as in England and Wales. The Court of Appeal took the relevant principles from the well-known English text-book on Executors, Administrators and Probate, by Williams, Mortimer and Sunnucks (20th Ed.) at paras 13-23 to 13-31. In summary:

> (i) It is for the person seeking probate to prove that the testator knew and approved the contents of his will when he made it.
>
> (ii) But knowledge and approval is generally presumed where the will has been duly executed by a person with testamentary capacity.
>
> (iii) That presumption is greatly strengthened when it is proved that the will was read to, or by, the testator before it was executed.
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> (iv) The presumption of due execution may be rebutted by matters which excite the vigilance or suspicion of the court as to whether there really was knowledge

and approval. Then the applicant for probate will have the burden of removing those suspicions.

(v) That burden may be large or small, on a sliding scale. The suspicion may be slight and easily dispelled, or so grave that only the strongest evidence may dispel it, or anything in between.

(vi) There is no complete or fixed category of matters which may give rise to suspicion, but they may include the preparation of the will by a person taking a benefit under it, the absence of independent advice and situations where the dispositions of the will conflict with the testator's known affections.

5. The Court of Appeal placed particular emphasis upon dicta of Lord Neuberger of Abbotsbury MR in *Gill v Woodall* [2010] EWCA Civ 1430; [2011] Ch 380. In that case the testatrix Mrs Gill left all of her estate to the well-known English charity the Royal Society for the Prevention of Cruelty to Animals ("the RSPCA") and (with reasons given) nothing to her only daughter Dr Christine Gill, who challenged the will for want of knowledge and approval and undue influence, and also made a claim in proprietary estoppel. At first instance she lost on knowledge and approval, but won on undue influence and proprietary estoppel. By contrast she succeeded in the Court of Appeal on want of knowledge and approval.

6. The points which the Court of Appeal in the present case took from Lord Neuberger's judgment in *Gill v Woodall* are the following. First, he emphasised, with full citation of earlier authority, the importance of proof that the testator read or had the will read to him before execution, as strengthening the case for knowledge and approval: see para 15, citing *Fulton v Andrew* (1875) LR 7 HL 448, 469; *Gregson v. Taylor* [1917] P 256, 261, *In re Morris deceased* [1971] P 62, 77F-78B, *Fuller v Strum* [2002] 1 WLR 1097, para 33 and *Perrins v Holland* [2010] EWCA Civ 840; [2011] Ch 270, para 28.

7. Secondly Lord Neuberger emphasised at para 16 the need not to let challenges to knowledge and approval by disappointed relatives undermine the "fundamental principle of English law, namely that people should in general be free to leave their property as they choose," and thereby result in many estates being diminished by substantial legal costs. The adoption of this point was challenged by Mr Keston McQuilkin for the appellant in his excellent written and oral submissions as inconsistent with previous decisions of the Trinidad Court of Appeal, which resolutely applied and upheld the traditional legal principles on want of knowledge and approval outlined above.

8. The Board does not read Lord Neuberger's observations about the underlying policy argument as having been intended in any way to change the well-established legal principles, but merely to sound a note of caution. Subject to one point, the remainder of

his judgment consisted of the most thorough application of the established principles to complex and unusual facts, on the basis of which, reversing the trial judge on the facts, he held that knowledge and approval had not been proved, because the suspicion generated by the facts had not been dispelled by the RSPCA.

9. There is a question, not raised by the arguments on this appeal, whether Lord Neuberger was seeking to change the law at paras 21-23, under the heading *knowledge and approval: the correct approach,* by suggesting that, in a case where the court had examined copious evidence over many days, the traditional two stage approach (i) is there suspicion? (ii) is it dispelled? should be replaced by a unitary approach asking the single question whether on all the evidence the burden of proving knowledge and approval has been discharged. In the event all three members of the court were prepared to examine rather than replace the judge's two stage approach, and conclude simply that he got the facts wrong, rather than used an incorrect approach. Furthermore Lord Neuberger observed at para 23 that the outcome was unlikely to depend upon which approach was used.

10. As will appear, and in sharp contrast with *Gill v Woodall*, this is not a case where there is copious evidence to examine about the testator's intentions, or about the circumstances of the preparation of the will. Even such evidence as there was (from one of the attesting witnesses) was largely struck out of his witness statement on a pre-trial application by the appellant, on the extraordinary ground that it was hearsay. The Board is therefore content to proceed on the traditional two stage approach, and leave the question whether it should be departed from in evidence-rich cases to a case where it may matter.

11. The facts about the preparation and execution of the will that may be said to have survived the very different findings of the judge and the Court of Appeal may be shortly stated. Mr Cox was, in January 2009, sound in both body and mind, so that, by common consent, he had testamentary capacity. The will was a very simple one-page document, executed on the back, and prepared professionally or by the adaptation of a professionally prepared draft. The will does not reveal who that professional was. By clause 1 Mr Cox appointed Mr Pascall his executor. By clause 2 he gave his main asset, his house and the leasehold property on which it was situated to the Eternal Light Community, described as a public association in the Roman Catholic Archdiocese of Port of Spain, for their general charitable purposes in accordance with their statutes. By clause 3 he gave the residue of his estate for the payment of his debts, expenses, duties and taxes, with any balance to be given to the Eternal Light Community for their charitable purposes.

12. Beyond the inference of professional preparation to be derived from looking at the will itself there was no evidence as to how or by whom it had been prepared, or as to the way in which Mr Cox's instructions were taken as to its contents. Mr Cox brought it, fully prepared, to the chancery office of the arch-diocese for execution on 6 January 2009. One

of the attesting witnesses, Kevion Burgess, was a clerk in the chancery. He saw and heard the contents of the will being read out to Mr Cox shortly before execution, by Ms. Mohammed, the Vice-Chancellor. Although the evidence of the two attesting witnesses did not coincide on every point, the other one, Ms Ramdeen, was not present when the will was read out. Nonetheless as is now common ground, the evidence of the attesting witnesses proved due execution, in the presence of both witnesses.

13. Mr Pascall learned about the will when, shortly before his death, Mr Cox gave it to him for safekeeping and he read it. Mr Pascall was a friend and close neighbour of Mr Cox. He played no part in the preparation or execution of the will.

14. As for Mr Cox's home, the evidence showed that he and the appellant jointly applied for planning permission for its construction some 11 years before execution of the will. Once built, Mr Cox lived in it alone.

15. In her judgment Kangaloo J found that, because of discrepancies between the evidence of the attesting witnesses, the will had not been duly executed. That would (if correct) have been enough to prevent a grant of probate, but it is clear that the main ground for the judge's decision was suspicion as to knowledge and approval which had not been dispelled. This seems to have been derived mainly from the lack of any provision for the appellant, from whom the evidence did not suggest Mr Cox had become estranged, and from the fact that the will was executed in the offices of the arch-diocese, which had a connection with the sole beneficiary. The suspicion was not dispelled, in her view, because persons connected with the beneficiary or the arch-diocese had not been called to give evidence, and because there was no evidence at all about the preparation of the will, or the giving of instructions as to its contents.

16. The Court of Appeal considered that the judge's assessment could not be allowed to stand because of five material errors of fact made by her, the effect of which was to undermine the reliability of her conclusion that suspicion as to knowledge and approval had not been dispelled. Some of them may shortly be summarised, because counsel for Mrs Graham conceded that those mistakes had been made by the judge.

17. First, the Court of Appeal found that the judge had been wrong to assume in the absence of evidence that the three witnesses from whose absence she drew adverse inferences, Ms Mohammed, Sister Anne Marie and Sister de Rosia were associated with the Eternal Light Foundation. This mistake was conceded before the Court of Appeal. Of course there was a loose, indirect connection between Ms Mohammed, the Vice Chancellor of the arch-diocese and the sole beneficiary, because the Eternal Light Foundation was described in the will as a public association in the arch-diocese, but that did not mean that adverse inferences could properly be drawn from their absence.

18. Secondly, the Court of Appeal found that the judge had wrongly placed weight on two supposedly contemporaneous documents demonstrating affection between Mr Cox and Mrs Graham, so as to raise suspicion at her exclusion from benefit in the will. Neither was contemporaneous, as was conceded in the Court of Appeal. One was the joint application for planning permission for the construction of Mr Cox's home, but that was made eleven years before the execution of the will. The other was a photograph of Mrs Graham's wedding, showing her father in attendance, but that was two years after the execution of the will. Further the Court of Appeal noted that Mrs Graham's self-serving evidence about the closeness of her relationship with her father was contradicted by the evidence of Mr Pascall, whose credibility the judge did not criticise.

19. Thirdly, the Court of Appeal found that the judge had failed to explain why the will had not been duly executed, and that counsel for Mrs Graham had been unable to make good the deficiency in her reasoning. It is now common ground that the judge was wrong about this, although it may be said that this has little impact upon the key issue of knowledge and approval.

20. Fourth, to the extent that this was relied upon by the judge on the issue of due execution, the Court of Appeal held that the judge had over-egged the disparities as between the evidence of the two attesting witnesses, and then failed to resolve them by deciding which was the more reliable. More to the point, the evidence of Mr Burgess that the will had been read to Mr Cox before execution was uncontroverted, because the other witness Ms Ramdeen was not present when that occurred.

21. Finally the judge was found by the Court of Appeal to have placed inappropriate weight upon the evidence that Mr Cox could not type, on the issue as to his part in the preparation of the will. The document was plainly typed by a professional, and the real question was what Mr Cox had or had not done in giving instructions as to its contents, as to which his inability to type was wholly irrelevant.

22. There were other criticisms of the process by which the judge derived her suspicions, such as the supposed failure to call as a witness an unnamed man who attended the chancery offices with Mr Cox, but these need not be spelt out in detail. It is sufficient for the Board to say that it agrees with the Court of Appeal that her determination of want of knowledge and approval was fatally undermined by the judge's mistakes in her analysis of the facts, so that the task had to be carried out afresh, either at a re-trial or by the Court of Appeal on the available evidence.

23. The Board also agrees with the reasons why the Court of Appeal took the latter course. As G. Smith JA said, the Court of Appeal had sufficient evidence with which to resolve the question and no useful purpose would be served by re-trying the case after the lapse of more than 12 years since the relevant events.

24. The Court of Appeal started its analysis with the fact that the reading of the will to Mr Cox shortly before its execution, coupled with his unchallenged testamentary capacity, was strong positive evidence in support of his knowledge and approval of its contents, which could on settled authority only be overborne by the clearest evidence. They then analysed four matters relied upon by counsel for Mrs Graham to see whether they provided sufficiently clear evidence to the contrary, and concluded that they did not.

25. The first was the supposed participation in the preparation or execution of the will of persons connected with the sole beneficiary. This they had already dismissed as unsupported by any evidence. As already noted, there was an indirect connection between Ms Mohammed and the Eternal Light Foundation, but no evidence that she had had any involvement in the preparation of the will, which had been fully prepared before Mr Cox attended the chancery offices for its execution.

26. The second was the absence of evidence that Mr Cox gave instructions for the preparation of the will. But this did not mean that he gave no instructions, and there did not appear to have been any way in which Mr Pascall could have investigated that matter. The identity of the professional involved was not apparent from the face of the will (as it often is), and Mr Pascall only had the will because Mr Cox personally gave it to him. The inference that he did give instructions substantially in the terms of the will is strong both from his executing it after it had been read to him, and from his later handing it to Mr Pascall as his will.

27. The third matter was the exclusion of Mrs Graham from any benefit under the will. The Court of Appeal dismissed this factor first because of the conflicting evidence about the closeness or otherwise of the relationship between father and daughter in 2009 and the absence of any contemporaneous documents supporting Mrs Graham's account, and because it was evidence from a disappointed relative falling foul of Lord Neuberger's policy point in *Gill v Woodall*.

28. The Board is not entirely persuaded by the Court of Appeal's analysis of this point. As already noted, the English Court of Appeal in the *Gill* case was not by this policy point seeking to change the law, and indeed the disappointed family member was successful in that case. In the present case the Court of Appeal correctly distinguished the *Gill* case by reference to its very different and indeed exceptional facts, but seems to have remained strongly influenced by the policy point about discouraging challenges to knowledge and approval by disappointed family members.

29. In the Board's view the complete exclusion of Mrs Graham from any benefit is at least a matter calling for the court's vigilance, but only at the lower end of the scale. As will shortly be explained, it by no means tips the balance against a finding of knowledge and approval, in the light of the strong evidence in favour of that conclusion.

30. The final matter relied upon before the Court of Appeal was the absence of evidence that Mr Cox obtained independent advice about the content of his will. The Court of Appeal concluded, quite robustly, that he did not need it, being an independent person in good mental and physical health who was free to dispose of his property as he pleased. The Board agrees that this lack of evidence goes nowhere to displacing the positive evidence of knowledge and approval. The will was clearly professionally prepared, and there is no way of knowing whether Mr Cox was or was not given independent advice about its contents, in particular the absence of any provision for his children. This is not a case of a gift to a fiduciary where nothing short of proof of independent advice will be sufficient to save it from presumed undue influence.

31. In the appeal to the Board, Mr McQuilkin skilfully placed his main emphasis on the combination of the absence of any provision to his client and the apparent involvement in the execution of the will of a person or persons with at least a loose connection with the sole beneficiary. The Board would be disposed to agree that they provide some ground for vigilance as to knowledge and approval, but not to an extent that comes anywhere near displacing the solid evidence that Mr Cox knew what he was doing by the will which he made.

32. The starting point is that he had full testamentary capacity when he made the will. This means (among other things) that he had a proper understanding of the identity of those persons who might be said to have a moral claim on his bounty, and must therefore at least have had in mind whether or not to benefit his daughter, before deciding not to do so, as he was free to do.

33. Next, and most compelling of all, the will was an extremely short and simple one-page document. The most perfunctory reading of it would demonstrate that he was disposing of all his property to the named charity, and that none of it was going to Mrs Graham. It was read over to him shortly before he executed it, and he could not have been unaware (if in sound mind) that this is what he was doing by executing the will.

34. Finally Mr Cox acknowledged the will as his will when he gave it to Mr Pascall as his intended executor for safekeeping. This is not one of those cases where a testator executes a will which is then held by lawyers or other family members, without him ever seeing it again. In this case Mr Cox must have taken it home as his will, and maintained a settled intention as to its contents until he handed it over shortly before his death.

35. For all those reasons, which differ only slightly from the reasoning of the Court of Appeal, this appeal is dismissed.