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Value judgement

Julie Butler analyses two recent England and Wales cases on undue influence

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Farmers dispute wills, farm ownership and proprietary estoppel on a regular basis. However, two 2023 cases illustrate how difficult it is to win undue influence cases. It has been said that there must be a photograph of the beneficiary holding a gun to the head of the testator to prove that they were 'unduly influenced' (coerced).

Under English and Welsh law, a testator theoretically has complete freedom to leave their assets in any manner they wish on their death (although such freedom is subject to some statutory limitations). However, one of the grounds on which a will may be challenged is if it can be established that the testator was subject to undue influence when they made the will and, as a result, they were coerced (or fraudulently misdirected) into making the will. One such limitation is the *Inheritance (Provision for Family and Dependants) Act 1975*, which means dependants, particularly the spouse, must be reasonably provided for. When drafting a will, the professional should make sure that there is sufficient financial provision for the dependants, otherwise a claim will be made. The burden of proof for establishing undue influence lies with the person asserting it. They must demonstrate undue influence on the balance of probabilities; i.e., was it more likely than not that there was undue influence when the testator made their will? This is notoriously difficult to prove.

Copley v Winter: an undue influence success

A case that highlights this is *Victoria Copley v Daniel Winter*.^[1] The focus of the dispute concerned a plot of land referred to as 'Church Lane', on which the deceased kept horses she was very fond of. Church Lane had development potential and, therefore, significant 'hope value'. Victoria Copley sought the pronouncement of the validity of the 2019 will. Daniel Winter counterclaimed, challenging the 2019 will on multiple grounds, including undue influence, and asking the England and Wales High Court (the EWHC) to pronounce against the 2019 will in favour of the 2017 will.

This matter concerned the will made by Elaine Doris Lodge. Lodge, who had terminal cancer, died on 22 February 2019 while she was in a care home. She had previously lived with her friend Brenda Stephenson, who died earlier on 16 February 2018. Copley was the granddaughter of Stephenson and the claimant in the case. Winter, the defendant, was the son of Josie, a friend of Lodge, and Winter himself became a friend of Lodge's and lived next to Church Lane. Lodge owned a house (the Rowans) and land (Lund Hill Lane and Church Lane), on which she kept horses.

Lodge had made wills in 1992, 25 March 2011 and 21 January 2017. Lodge then made a final will on 11 January 2019. The argument in the Court centred around whether it was the 2017 or 2019 will which was Lodge's last valid will. In the 2017 version, Church Lane Land was left to Winter, but in the 2019 version this same land was given to Copley (with an expression of wish that if she chose to sell she would offer this to Winter at market value first). Winter thought that there had been undue influence by Copley over Lodge.

Evidence of no undue influence

The judge went to great length to summarise the evidence he heard over the three-day trial, as well as documentation from the will file, which was over 50 pages. The evidence that he found, which did not support undue influence of Lodge by Copley, included that:

- Lodge had previously thought through carefully changes in her will to reflect what she wanted to achieve;
- Copley's evidence that she did not exercise undue influence was of good quality;
- the evidence of several witnesses, including the solicitor, that Lodge appeared to be in control of her faculties and that there was no indication of the exercise of undue influence at the time of signing the 2019 will;
- the evidence that a GP found in assessing the position on 14 January 2019; and
- the admission to Victoria House on 15 January 2019 considered Lodge to have relevant capacity and Lodge died just over one month later, with the will having been made just before she entered the care home.

It is interesting to note that, with the Chancellor's statement that 300,000 more houses are to be built, there will be ever more money in development land with potential for dispute.

In his judgment, Justice Pearce listed multiple factors that he considered indicative of undue influence, including the deceased's vulnerability and deteriorating health, the fact that the claimant had arranged the deceased to meet with her solicitor to change her will and, most notably, his conclusion that the claimant had lied in her evidence and that her lying 'tainted' her evidence on other matters. The list of factors supporting the contention that there was no undue influence was, however, shorter. Notwithstanding this, Pearce HHJ found the will to be valid and there to have been no undue influence.

He considered that although the circumstances of the case were consistent with undue influence, it was more probable that the deceased changed her will because she 'rationally concluded' the claimant would look after Lodge's horses if she was left Church Lane.

***Rea v Rea*: undue influence proven**

There was another 2023 undue influence case, *Rea v Rea*,^[2] where the claim for undue influence over the testator was more successful. The factors all provided solid and reliable evidence that the effect of Rita Rea's coercion was that Anna Rea (the testator) made a will that did not reflect her true testamentary intentions, which Rita (the daughter) had overborne. A large amount of circumstantial evidence is required to win an undue influence case and there is a high burden of proof. This means that undue influence allegations should not be embarked on lightly, as the claimant may find that any benefit is largely superficial and much of the estate can become diminished by legal costs. This was borne out in *Rea*, given that effectively two trials had taken place and it was a serious shame that the parties could not agree an amicable settlement throughout the seven years of litigation over the inheritance of the house.

In so many farming cases it seems a serious shame that an amicable arrangement cannot be reached. That said, the value of farmland and horse paddocks is currently high and the potential development value is likely to increase the propensity for dispute. Also worth noting is that, with farming partnerships, the partners invariably work closely together and they can build up 'grudges' together with imaginary or justified disagreements, resulting in significant feuds. It is therefore increasingly important to ensure that:

- strong legal agreements are in place, are understood and are updated regularly;
- quality farm accounts are produced with extensive notes and explanations;
- there is a choice of strong executor, as they are dealing with a 'living' business;
- there are regular partners meetings with notes and, ideally, the occasional professional involved;
- the wills are regularly updated and witnessed by reliable individuals.

^[1] [2023] EWHC 1712 (Ch)

^[2] [2023] EWHC 1901 (Ch)

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