Case No: PT-2021-000920

Neutral Citation number [2023] EWHC 2242 (Ch)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

BEFORE:

MASTER MARSH (Sitting in Retirement)

BETWEEN:

SAMUEL ARTHUR JONES

Claimant

- and -

(1) NEAL TRACEY
(2) STEPEHN ROBERT BIRT
(3) LINDA MARIA CANO
(4) THE BRITISH POLIO FELLOWSHIP
(5) CHRISTOPHER STROTTEN
(6) CRYSTAL LOCKETT

Defendants

ROSE FETHERSTONHAUGH appeared on behalf of the Claimant
FIRST, SECOND AND SIXTH DEFENDANTS appeared in person
GRAHAM STOTT appeared on behalf of the Third Defendant

JUDGMENT

TRIAL 10-13 JULY 2023
JUDGMENT 14 JULY 2023

1. THE MASTER: This is my judgment on the trial of this claim in which the claimant, Mr Jones, seeks a grant in solemn form under the will of David Charles Turner dated 21 February 2013. Mr Turner died on 20 August 2017; so nearly six years have now passed since his death without the devolution of his state having been resolved. The original will has not been found and a grant of probate is sought based upon a copy of the will. There is no dispute that (a) the will was validly executed (b) at the material time Mr Turner had testamentary capacity and (c) Mr Turner did not make a will subsequent to the 2013 will. The question for the court is whether Mr Turner revoked the 2013 will. The claim is opposed by the third defendant, Linda Cano, who is Mr Turner's sister. She relies upon the presumption of revocation and seeks an order pronouncing against the 2013 will and in favour of an intestacy. In that event, she would inherit Mr Turner's entire estate.

2. Mr Turner was born on 15 July 1946. He suffered from polio in childhood from which he had a moderate degree of disability. He married but divorced in 1998. He later formed a relationship for some years with Elizabeth Amer, but that relationship broke down in 2012 and it appears there was a considerable degree of acrimony between them. Mr Turner had no children of his own. He died prematurely of a brain tumour.

3. Mr Turner lived at Woodside Farm in Bittams Lane, Chertsey, Surrey. Woodside Farm comprised, before the building of the M25 motorway, a modestly-sized bungalow with a number of outbuildings and a holding of land of about 15 acres. Mr Turner's father ran a pig farm and a livestock transport business there. But when the M25 was built, part of the land was acquired for that purpose, and the holding of land was split, leaving a significant area of land on the opposite side of the motorway from the bungalow and outbuildings. As a consequence, the farm business closed.

4. At the time Mr Turner made his will in 2013, he was the registered sole proprietor of Woodside Farm under Land Registry title SY192231. That holding comprised the bungalow and some ten outbuildings in various states of repair. The total area of land in the title is about 1.5 acres. In addition, he had a joint interest in three plots of land totalling about 14 acres ("the Woodside Farm Land") under title numbers SY677389, SY674057 and SY542518. He jointly owned that land with a company named Primhill

Limited of which the director was Mr Bhalla. Primhill Limited became the joint owner of the Woodside Farm Land after the third defendant sold her interest in the land to a third party. That interest was then acquired by Primhill, which is a commercial land developer and completely unconnected with the Turner family. The Woodside Farm Land may have significant value for development.

5. Mr Turner appears to have been a gregarious man with a love of guitars, music and cars. He was also keen on shooting. He had a close circle of male friends, some of whom gave evidence at the trial. His friends with a common interest in music (and that was most of his friends) regularly gathered in what has been described, perhaps a little grandly, as the 'music room', which was an outbuilding forming part of the farm. In the music room, music of the style enjoyed by Mr Turner and his friends was played and recorded, and clearly there was a generally convivial and enjoyable atmosphere with much conversation. It may not be right to say that Mr Turner held an open house, but the evidence suggests that he never locked his house, whether day or night, and friends would regularly come to see him.

6. It is sad to say that Mr Turner had a poor relationship with his sister Linda. It is not in doubt or indeed disputed that he became estranged from her from about 2008, the estrangement arising out of the sale of Linda's interest in the Woodside Farm Land following the death of their mother. It is not necessary to go into the reasons for the estrangement in any detail.

7. The 2013 will contained the following provisions:

    (1) The first defendant, Mr Tracey, and the second defendant, Mr Burt, were appointed joint executors. They were longstanding and trusted friends of Mr Turner.
    (2) The British Polio Fellowship was given a legacy in the sum of £5,000.
    (3) Mr Christopher Strotton, who was Mr Turner's business partner, received a legacy of £10,000 and Mr Turner's half share in their joint business, Acorn Skip Hire. The British Polio Fellowship and Mr Strotton are the fourth and fifth defendants in this claim.

(4) The other pecuniary legacy was a gift to the sixth defendant who is Elizabeth Amer's daughter, from whom Mr Turner was not estranged. She was left any interest Mr Turner had in a ransom strip in Farnborough, Hampshire.

(5) The main provision of the will was that Mr Turner's residuary estate, including Woodside Farm and the Woodside Farm Land, was given to Mr Jones, the claimant in these proceedings. Mr Jones was clearly (and the evidence points unequivocally in this direction) a close friend of Mr Turner over a lengthy period of time.

(6) Mr Tracey, although appointed an executor, did not benefit under the will. Mr Burt was left Mr Turner's collection of musical instruments.

(7) Significantly, the third defendant was left nothing under the will. Clause 5 of the will states:

> "I have made no provision in this will for Elizabeth Amer or my sister, Linda Maria Carno, as I disapprove of the way they have treated me during my lifetime."

8. Before going further, it is necessary to record that on Friday 7 July 2023 (the Friday before the trial commenced) the third defendant applied to adjourn the trial. There had been previously a costs and case management conference in November 2022, and directions were given for disclosure, exchange of witness statements and for the trial. It is said by the claimant that the third defendant has shown a somewhat casual approach to compliance with the requirements specified in that order, but nothing for today's purposes turns on that. I need only to record that the third defendant did not exchange signed witness statements with the claimant pursuant to the order made at the CCMC, and it was only at the trial that signed copies of the statements she relied upon were produced.

9. On Friday, 7 July 2023 the third defendant made an application with three elements, the principal element being her application to adjourn the trial on the basis that she could not fly to England from where she lives in Spain for medical reasons. It is accepted that, unfortunately, the third defendant suffers from Parkinson's disease. However, her application was based upon very slender medical evidence which was not in a form that

complied with the requirements set out clearly in the Chancery Guide. Her ability to fly was not determined at the hearing due to the limited nature of the evidence. Although it was said the third defendant could not travel, it was not suggested that she was unable to give evidence. As a consequence, rather than adjourning the trial, an order was made permitting the third defendant and her husband to give evidence by video link, subject to the third defendant satisfying the court that under Spanish law this was permitted or after obtaining approval from a Spanish court. Clearly it was unattractive to adjourn the trial, particularly as it was based upon inadequate medical evidence, since there was a prospect that the third defendant might be unable to give evidence in future if her condition deteriorated. Furthermore, as I have noted, the sixth anniversary of Mr Turner's death is in August 2023 and title to the estate needed to be resolved so that it can be administered without further delay.

10. The third defendant sought two further orders. The first was an order for third party disclosure in respect of a file held by the Verisona Law relating to legal work carried out on behalf of Mr Turner between 2013 and 2016 concerning Woodside Farm and the Woodside Farm Land. She also sought an order for witness summaries to be permitted in respect of evidence to be provided by the first and second defendants. The order for third party disclosure was made, but on the clear basis that if there was a delay in compliance it would not hold up the trial. The application for witness summaries was refused. The application as it was framed was inappropriate, but in fact, as I will come on to explain, Mr Tracey and Mr Burt gave evidence at the trial.

11. At the trial, the claimant was represented by Rose Fetherstonhaugh and the third defendant by Mr Graham Stott. Mr Tracey and Mr Burt have been in court throughout the trial, acting in person, but they have opted not to make submissions. The fourth and fifth defendants did not attend the trial at all. The sixth defendant attended with a view to providing assistance to the court and gave evidence. I would like to record my thanks to both counsel for their assistance and also record that I am extremely grateful to Mr Tracey and Mr Burt for their assistance. They were placed in a difficult position as the executors appointed under the will. They went to considerable lengths to try to find the original will. They attended the trial throughout, adopting a neutral position as between the claimant and the third defendant. They provided a fine example of

executors performing a somewhat thankless task with extremely good grace and considerable diligence.

12. I need, before I come on to the evidence and the law, to say something about the course of the trial. The commencement of evidence was delayed at the parties' request for the Verisona file to be obtained and considered. This was a useful step because it gave the parties time to assimilate what was in the file. Perhaps more significantly, the way the evidence was received took a slightly unusual course after the claimants' witnesses had given evidence. Mr Tracey and Mr Burt were called by the court to give evidence. They had made it clear in their acknowledgements of service and their standard form defences that the court should be aware of the scope of the searches they had undertaken at Mr Turner's house for the original will and the state of his papers. It was clearly appropriate in this case for evidence to be obtained from them for two principal reasons. First, they wanted their evidence to be available to the court. In the event, neither had been called by the claimant or the third defendant, despite an indication to the contrary by the third defendant. Secondly, a probate claim is not entirely on all fours with a standard claim between parties where only their narrow interests are involved. In a probate claim there are wider interests at stake beyond those of the parties. The estate of the deceased and the deceased are not parties to the claim, but in a real sense the claim is about the deceased and about the disposition of the deceased's estate. There will often be no one who is in a position to represent the interests of the deceased and the estate and those interests need be looked after by the court The court needs to ensure that the estate is distributed lawfully, not just in accordance with the narrow wishes of the parties, and to ensure that it is distributed under the will, or the right will, or under an intestacy. It is therefore important for the court to receive such evidence as may be helpful to determine whether a grant should be made and upon what basis. The first and second defendants plainly had relevant evidence to give. The approach adopted by the court was supported by both counsel.

13. I would also observe that it may be appropriate in a probate claim for the court to take a rather less stringent approach to the usual requirements for exchange of witness statements than might be appropriate in more mainstream litigation. It should be rarely appropriate for debarring orders to be made where such an order will or may shut out from the trial evidence which might be helpful to the court. However, plainly a probate

claim does not provide complete freedom to the parties to ignore the orders of the court and the court rules.

14. Mr Tracey was asked to confirm the contents of his acknowledgement of service, his letter to the Probate Registry dated 20 December 2018, in which he sought to persuade the Probate Registry to make a grant based upon a copy of the will and also a short additional statement he prepared early on in the trial. Mr Burt was asked to confirm his acknowledgement of service. Counsel were then permitted to cross-examine Mr Tracey and Mr Burt. During the course of that cross-examination both witnesses produced photographs from their records which were of assistance to the court.

15. In a similar way, the sixth defendant, Ms Lockett, had provided an informal statement in 2001 but expressed the wish to provide the court with her evidence. She was therefore called by the court. She swore an oath and confirmed the contents of her statement, but in her case there was no cross-examination.

16. Although the third defendant and her husband had ultimately provided signed statements, they were unable to clarify whether consent was needed from the Spanish court for their evidence to be obtained by video link and Mr Stott conceded that they were unable to appear before this court to give oral evidence. Therefore their witness statements stand as hearsay statements and I will consider later in this judgment the extent to which they assist.

17. I now turn to deal with the law. The starting point is section 20 of the Wills Act 1837, which provides, including its heading:

> "**20 No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.**
>
> No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner herein-before required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is herein-before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same."

18. It follows that if there is no document revoking the will that complies with section 20, for there to be a revocation there must be destruction of the will along with an intention to revoke.

19. I have been referred to passages in *Williams on Wills* 11th ed. [18.28] - [18.29] and [18.31] and the corresponding paragraphs in *Williams, Mortimer & Sunnucks* 21st ed. Rather than cite those paragraphs, I can summarise the approach the editors of those works suggest the court should adopt:

(1) If a will was last traced to the possession of the testator and is not forthcoming on his death, there is a prima facie presumption in the absence of circumstances attending to a contrary conclusion that the testator destroyed it with the intention to revoke it.

(2) The presumption may be rebutted. It has been suggested in one case that the evidence needs to be "clear and satisfactory", but I do not consider that this gloss adds anything to the usual requirement that the court must be satisfied on the balance of probability by the evidence before it. Either the evidence taken as a whole achieves the outcome of rebutting the presumption or it does not. Obviously, evidence that is unclear or unsatisfactory, or both, is unlikely to satisfy the court.

(3) Both *Williams on Wills* and *Williams, Mortimer & Sunnucks* provide examples of the type of evidence the court may take into account. These examples are only of passing interest because each case necessarily involves a careful review of the circumstances in which the last will, and possibly earlier wills, were made, the will-maker's intentions and relevant events through the will-maker's life up to the will-maker's death. The character of the will-maker and their lifestyle may also be relevant. It is unlikely that the facts of an earlier case will precisely map onto the case under consideration.

(4) The burden of proof lies upon the party seeking to propound the will.

(5) Finally (and I would suggest curiously) the court is required to consider what weight is to be given to the presumption.

20. The editors of *Williams, Mortimer & Sunnucks* put the final proposition in the following way.

> "The strength of the presumption as to the revocation of a missing will traced to the testator's possession varies according to the character of the custody that the deceased had over the will."

21. When discussing this claim with counsel during the course of the submissions, I suggested it was unsatisfactory when considering the evidence before the court to consider the weight to be given to the presumption. It seemed to me to me to be a cumbersome way of proceeding because it involves the court making findings about part of the evidence in order to establish the weight of the presumption before considering all the evidence, including the evidence already considered, to decide whether the presumption has been discharged. In reality, looking at the facts relevant to weight is part of the overall review of whether the claimant can discharge the burden imposed upon them. The presumption merely confirms that the burden of proof lies on the person propounding the copy will. It is artificial and unnecessary to adopt a two-stage approach. However, the approach I have summarised is an established one.

22. The presumption itself derives from a decision of Baron Parke in *Welch v Phillips* (1836) 1 Moore CC299 at page 302. I do not need to cite the well-known passage for the purposes of this judgment. The notion of weight being ascribed to the presumption also derives from 19th century authority. In *Sugden v St Leonards* (1876) 1 PD 154 at page 217 Cockburn CJ remarked:

> "…the presumption will be more or less strong according to the character of the custody which the testator had over the will".

23. However, more recent authorities have tended to emphasise that the presumption is not rigid. There is a report, albeit one in the third person, of a decision of Wrangham J in *Re Yule (Deceased)* (1965) 109 Sol J 317, where he is reported as saying:

> "It was clear from the older authorities that those presumptions were not intended to be regarded as rigid statutory rules, when they would produce absurd results, but as indications of the inferences which would always be drawn by the court from a given state of evidence. *The court would approach the question by considering what was the most probable explanation of the absence of the will on the testator's death.*" [my emphasis]

24. Those remarks have been cited with approval in more recent decisions, including the decision of Ryman J in *Rowe v Clarke* [2005] EWHC 3068 (Ch) at paragraph 42. Interestingly the editors of *Williams, Mortimer & Sunnucks*, having described what I might call the conventional approach applying the *Welch v Philips* presumption, go on to observe at [11-31]:

> "It seldom happens that cases, which set out upon legal presumptions, require to be decided on the mere presumptions. The general circumstances of the case usually lead to a tolerably satisfactory conclusion of the real facts, either confirming or repelling the presumption. The presumptions are to be treated as indications of inferences to be drawn and not as rigid rules."

25. Further inroads into the conventional approach may be found in remarks made by HHJ Behrens sitting as a High Court judge in *Re Whelen (Deceased)* [2015] EWHC 3301 (Ch) at [145]. After referring to paragraphs [12] and [13] in the judgment of Mummery LJ in *Hawes v Burgess* [2013] EWCA Civ 94 and paragraph [22] of the judgment of Lord Neuberger MR in *Gill v Woodall* [2010] EWCA Civ 1430, he remarked:

> "Having regard to Mummery LJ's view about the use of presumptions in this area of law and Lord Neuberger's view about the better approach it seems to me (adapting the words of Latey J in Morris) the court must consider all the relevant evidence available and then, drawing such inferences as it can from the totality of that material, it has to come to a conclusion whether or not those propounding the will have discharged the burden of establishing that the 1982 Will was lost rather than destroyed with the intention of revoking it."

26. It may well be that as the law develops the days of the *Welch v Phillips* presumption are numbered. However, for the purposes of this case, I will apply what I have described as the conventional approach. As a consequence I must make findings on the following issues:

(1) Was the original will in the custody of Mr Turner?

(2) Have adequate steps been taken to locate the original will?

(3) What was the character of Mr Turner's custody of the will?

(4) What were Mr Turner's testamentary intentions, both positive and negative, when he made the will?

(5) Did those intentions change between the date of making the will and his death? This last step involves, amongst other matters, reviewing the nature of the friendship between Mr Turner and Mr Jones and whether that changed, and similarly the nature of the relationship between Mr Turner and his sister, Linda, and whether that changed.

27. I now turn to the evidence. In a case such as this, the court is trying to understand both what the will-maker was thinking when the will was made and whether, and if so how, those thoughts may have changed after the will was made. The one person who could provide that evidence definitively is not available to the court, so the court must rely upon secondary sources. When doing so, the court will always have in mind that oral evidence from witnesses who in this case knew Mr Turner and may benefit under his will may be partisan. In this case, there is no will file available to help the court, for reasons which are puzzling, but Blaser Mills, who made the will, simply say there is no file available. It is also necessary to look at how the will-maker acted when alive. There is a rich seam of contemporaneous documents in the file kept by Verisona Law which are relevant both to testamentary intention and steps taken after the will was made. The court has heard from witnesses who knew Mr Turner well,; their evidence has been very helpful.

28. The court received evidence from the claimant who runs what he describes as a mobile catering unit; other witnesses described it more colloquially as a burger van. I am sure Mr Jones would not mind if I say that he described himself as being ‘no great scholar’ and it may well be that many of the steps taken that are evidenced in the Verisona file were not matters he fully appreciated. Mr Jones made an affidavit to support the application to obtain a grant based on a copy of the will, which was unsuccessful, a

statement in 2021 and his statement for the trial. It is right, as Mr Stott pointed out in cross-examination, that there are some inconsistencies between these three documents. However, I do not consider them to be material. I was satisfied when Mr Jones gave evidence that he is plainly a truthful witness and indeed much of his evidence is corroborated either by contemporaneous documents or by other witnesses. I am unable to accept Mr Stott's submission that I should treat Mr Jones's evidence with caution. The high point of Mr Jones's evidence is that he was a longstanding and close friend of Mr Turner when the will was made and he remained a close friend of his up to the date of Mr Turner's death.

29. I heard evidence from Mr Jason Hill, Mr John Edwards and Mr Malcolm Carolan. They all knew Mr Turner well. Mr Hill knew him from about 2000, Mr Edwards knew him well for about ten years before Mr Turner died and Mr Carolan knew him particularly well and from 2010 lived in a mobile home on Woodside Farm, where he still resides. I am satisfied that in each case that they are truthful witnesses. Their recollections as to some immaterial points is imperfect, but that does not affect my conclusion that their evidence can be accepted. In addition, I was provided with a hearsay statement from Mr Colin Pattenden, who knew Mr Turner for about ten years. His evidence is consistent with the other witnesses called by the claimant, and albeit his evidence is untested, I accept that it is accurate and should be given due weight.

30. Mr Tracey and Mr Burt gave evidence claiming they both knew Mr Turner well. They were at pains to provide assistance to the court, and their evidence very largely accords with the evidence of the claimant and his three live witnesses on all material matters. Finally, there is Ms Lockett, although her evidence is perhaps of limited materiality. Her evidence again supports the claimant, and I accept that she was providing truthful evidence to the court. As I have said, the third defendant and her husband's statements are hearsay statements, and I will come to them shortly.

31. Turning therefore to the issues of fact I have to decide, the first concerns custody of the original will. The presumption only arises if it can be shown that Mr Turner had custody of the original will. Mr Jones's particulars of claim put forward the position based upon the very short *Larke v Nugus* statement provided by Mr Moore of Blaser Mills. The claimant says that he ‘understands’ that Mr Turner left Blaser Mills' offices

with the original will. Although this assertion is put forward in rather tentative terms, the claim has proceeded on the basis that Mr Turner had the original will and took it from Blaser Mills in 2013. There is no evidence from any witness who can recall Mr Turner referring to the original document or any witness who saw it in his possession, and there is no indication that he had possession of it from contemporaneous documents. Despite the limited factual basis for this finding, I consider I should follow the approach adopted by the parties and I find, therefore, that Mr Turner had custody of the original will.

32. Next here is the question of what steps were taken to search for the will after Mr Turner's death. The evidence provided by Mr Tracey and Mr Burt about the steps they took was helpful. They were faced with a difficult task, because Mr Turner's papers were in a disorganised state. I am satisfied that Mr Tracey and Mr Burt adopted a careful approach and did not find the original will. Furthermore, the claimant has now had control of the farm now for some years. He has a strong incentive to find the original will but has not been able to do so. A copy of the will in a sealed envelope marked "The last will and testament of David Charles Turner" was found in the music room. The evidence from the claimant and Mr Tracey and Mr Burt, which I accept, is that Mr Turner was given four copies of the original will by Blaser Mills and that those copies were virtually indistinguishable from an original. One copy of the will was handed to each of the claimant, Mr Jones, Mr Tracey, and Mr Burt after the will had been made; it follows that Mr Turner retained the fourth copy. I am satisfied that adequate searches have been made and the original will has not been found. It follows that the presumption arises.

33. Next, I have to consider the weight of the presumption. The starting point here is that there is no evidence of what Mr Turner may have done with the original will. There is no evidence about where he kept it. The court is reliant upon evidence from the witnesses about his general habits and character. A number of photographs taken by Mr Tracey and Mr Burt from the period during which they carried out searches have been produced. I can safely say that Mr Turner was not a tidy person and his papers were in a particular mess. He appears to have kept some documents in a drawer in his dining room, but he also kept papers in an outbuilding which he called his office and in the music room. There is no obvious system adopted by him for storing papers other

than perhaps papers relating to the skip hire business he ran jointly were kept, albeit in a very messy state, in his office. No witness was able to say that Mr Turner had kept important papers and documents in a particular place other than that some documents were kept in the drawer in the dining room. When asked about possible secure places, Mr Tracey suggested documents could have been stored in Mr Turner's gun cabinet, but in fact there was no indication that he did so. Colourfully, Mr Carolan described Mr Turner's office as: "It looked as though it had been through two world wars and had every piece of paper created since Noah's Ark. It was an absolute mess". Other witnesses provided similar evidence, although it was said that Mr Turner could usually find particular papers when he needed to. Mr Hill described Mr Turner's papers as "organised chaos". Whether organized or not, chaos is chaos. Mr Edwards described Mr Turner's papers as being in a mess and also said: "His yard looked as though a bomb had hit it." I can therefore conclude that the character of Mr Turner's custody of the will was such as to put the original document at considerable risk of loss or accidental destruction. It is true that Mr Turner was something of a hoarder, but he was also very disorganised, and the greater degree of disorganization, the greater the risk of loss or accidental destruction. Although it is not for the court to speculate it is striking that Mr Turner had a copy of the will in his possession which is very hard to distinguish from the original. If anything, in my judgment, this increases the likelihood that another copy, perhaps the original, might have been destroyed accidentally. In any event, I can conclude in this case that there is little weight to be given to the presumption.

34. I now turn to testamentary intentions and I start with the will. Mr Turner's testamentary intentions as derived from the will are expressed in clear terms. He did not want his sister or his ex-partner to benefit at all. He chose to leave his residuary estate, including the land, to Mr Jones. Much help can be obtained as to testamentary intentions from the Verisona Law file, which opens with an entry on 14 April 2013 (less than two months after the will was made). The context of Verisona Law's involvement was that Mr Turner had obtained tax advice about the devolution of his land from Peter Dawson and Mr Turner was introduced to Malcolm Purdue of Verisona Law by Mr Dawson to see whether steps to transfer the land should be taken. The Verisona Law file opens with an email from Mr Dawson to Mr Purdue on 14 April 2013, where it is recorded that there was a wish on the part of Mr Turner to

make a gift. There was a telephone call between Mr Purdue and Mr Dawson on 16 April 2013, when Mr Purdue was told by Mr Dawson that Mr Turner had no children and wanted to make a gift of the bungalow and the land to his long-term friend, Sam Jones. He explained that Mr Turner had other assets and would be living in a mobile home, although possibly that would be stationed on site, in which case they would have to consider the reservation of benefit and other details.

35. Then on 19 June 2013 there was a meeting at Mr Purdue's offices, attended by Mr Jones and by Mr Turner. The attendance note on the Verisona Law file records Mr Turner as saying he had known his friend Sam for 20 years and was proposing to give the house and land at Woodside Farm, which he owned outright, to him, along with Mr Turner's one-half share in the land at the rear and on the other side of the motorway slip road. He went on to say he had already made a will leaving his assets in general to Mr Turner, but for tax funding purposes he felt that it would be beneficial after considering the capital gains position with Mr Dawson to give some of the land immediately in the hope that he would live seven years and thereby avoid inheritance tax on the land.

36. It is clear from those notes, which were made within a very short period after the will was made, that Mr Turner had in mind not just leaving matters until his death but with a view to saving inheritance tax to implement his wishes by making a transfer or transfers of the land in question. It seems to me clear from the will and indeed the unchallenged evidence of all the witnesses that Mr Turner expressed a strong dislike for his sister. His intentions were clear in 2013 that he wanted Mr Jones to benefit as his friend and did not want any part of his estate to go to the third defendant.

37. The last issue therefore is to consider whether Mr Turner's intentions changed. The period between the making of the will in early 2013 and Mr Turner's death in August 2017 is relatively short. There is a good deal of help that I can derive from the Verisona Law file, because the work they undertook was drawn out over a period up to June 2016. There is no clear evidence about when Mr Turner became ill other than that it was in 2016 and it may have been in late 2016. Mr Turner was found at his home, having collapsed, and was diagnosed subsequently as having a brain tumour. It is

simply unknown when he first became affected by that disease, but on any view there are only a few months between the last entry in the Verisona Law file and his illness.

38. Mr Stott, who appeared for the third defendant, relied upon the Verisona Law file to support his case and suggested it demonstrated that Mr Turner had changed his mind and did not follow through with the gifts of the land. To my mind, however, the Verisona Law file, if anything, supports the claimant's case. By early 2013 Mr Turner had made his will. He did not need to do any more. On his death, Mr Jones would inherit the farm and land albeit that inheritance tax would be payable. What Mr Turner was seeking to achieve with the assistance of Mr Dawson and Verisona Law was to mitigate the tax that his estate would have to pay by making potentially exempt transfers in the hope that he would live seven years.

39. The evidence in this case suggests that Mr Turner was not a good administrator, and, as I have indicated, the work undertaken by the Verisona Law proceeded slowly. As at 19 June 2013, Mr Turner was planning to transfer the house and all the land and would live in a caravan on a small parcel of land that he would retain, but it was thought at that stage that the planning position would need to be sorted out. By May 2014 nothing had progressed. In July 2014 and October 2014 further meetings were held with Mr Turner. By October 2014 it was clear, based on Verisona's files, that Mr Turner was content about the capital gains tax position which had been raised earlier and intended to transfer his entire interest in both the solely-owned land and jointly-held land. This would require two transfers, one of which would have to be executed by Primhill. The transfer relating to Woodside Farm was signed in about October 2014, but for reasons which are not entirely clear, Mr Turner did not give instructions for that transfer to be completed and registered. It does not, however, lead to a conclusion in my judgment that a decision to register the transfers together when both had been executed means that Mr Turner had changed his mind about the transaction. An approach was made to Mr Bhalla of Primhill, who was required to execute the transfer. Mr Turner spoke to him in December 2014 and the transfer was sent out by Mr Purdue to Mr Bhalla. There was no response and Mr Bhalla was chased by Mr Purdue in May 2015. In April 2016 Mr Purdue wrote to Mr Turner to say that he had not heard from Mr Bhalla. Then, and as it seems to me, importantly, on 26 May 2016 Mr Turner sent an email to Mr Bhalla in which he makes a reference to having spoken to him the

previous week. Mr Turner provided the Verisona Law's contact details, and on 2 June 2016 Mr Bhalla apologised, saying he would ring Verisona Law the following day. It is not known what happened next.

40. It appears to me that the information recorded on the Verisona file is consistent with Mr Turner having had a continuing intention to benefit Mr Jones and that intention continued right up to May 2016. There is nothing on the file to show a change of heart on the part of Mr Turner. The file is consistent with Mr Turner seeking to implement his testamentary wishes prior to his death in order to mitigate his estate's liability for inheritance tax.

41. Mr Stott points to two transactions for telephone mast leases on Mr Turner's land and to an email from Mr Turner to Cluttons on 25 January 2016 saying that he is the registered owner of the land. He was merely stating the position accurately. He remained the legal owner and despite Mr Turner having expressed an intention to transfer the land, only he could deal with it as the legal owner. His assertion on 25 January 2016 needs to be seen in the context of continuing efforts to get Primhill to sign the transfer.

42. Mr Turner's continuing testamentary intentions can be viewed from another angle. There is overwhelming evidence, which I accept, that after having made the 2013 will, and probably around the time of signing the transfer of Woodside Farm, Mr Turner announced to his friends that Mr Jones was to be treated as the owner of the farm. He was given control and he was to be responsible for it. He was stated to be 'in charge'. Again, this is only consistent with Mr Turner's testamentary intentions remaining unchanged. There is no evidence to suggest that after the announcement to Mr Turner's friends, he made any contradictory statement saying that he changed his mind. In short, in my judgment there is no evidence of any weight to suggest that Mr Turner's intentions changed from the date he made his will in 2013.

43. There are five points I can make by way of summary:

(1) Mr Turner remained estranged from his sister. Dying intestate would benefit her, and there is evidence from Mr Turner's computer to suggest that he was aware of what would happen if he died intestate.

(2) His friendship with Mr Jones and Mr Jones's family continued. There is clear and

unchallenged evidence that Mr Jones was an almost daily visitor to the farm.

(3) Mr Jones, with others, helped to care for Mr Turner when his illness became debilitating shortly before his death, showing a strong bond and connection between them.

(4) Mr Turner did not say either to Mr Jones, Mr Tracey or Mr Burt that he had changed his mind and that they should destroy their copies of the will. Furthermore, Mr Turner retained one copy of his will, and indeed it is possible he did not appreciate that it was a copy rather than being the original.

(5) There is no evidence that Mr Turner attempted to make a new will. Although Mr Turner with Mr Tracey's help completed and signed a lasting power of attorney, it is highly likely in my judgment, given his past practice, that he would have taken steps to destroy his will without obtaining legal help and being clear of the consequences.

44. I need only deal with the third defendant's and her husband's written evidence briefly. Mr Cano's witness statement deals with a number of historic matters which are not material. She accepts that she had little contact with her brother from about 2008. She has no first-hand knowledge she can give about the material period. She observes that her brother had made a number of wills before 2013 but had changed them when he had fallen out with a particular beneficiary. However, this assertion is both unsupported and unspecific and plainly does not relate to the period between 2013 and 2017. She also says that Mr Turner had a tendency to lie and would be selective with the truth. However, again these are merely general assertions and they are unrelated to people or events. In short, I do not find her evidence to be of any assistance to me. Mr Cano's statement adds nothing.

45. In conclusion, drawing the strands together:

(1) the original will was in Mr Turner's custody;

(2) although the presumption applies, it is of only very minor weight in view of the way in which Mr Turner dealt with documents and his lack of organisation;

(3) there is overwhelming evidence which points toward Mr Turner not having intentionally destroyed the 2013 will. His testamentary intentions remained unchanged until his death.

41. I will make an order for a grant of probate of the contents of the 2013 will as contained in copies, and I will also order that caveats which have been entered in relation to Mr Turner's estate should be discharged.