A tale of greed and exploitation of illiteracy

Rarely has a probate dispute been more newsworthy and tabloid-dominating than *Reeves v Drew,* decided by Michael Green J in the English High Court on 31 January 2022, and which has now finally come to an end with the Court of Appeal refusing the claimant permission to appeal on 27 June. The judgment could easily replace most novels as good holiday reading.

During a 3-week trial, the Judge heard and read evidence from 60 witnesses who between them produced 100 witness statements, as well as over 4,000 pages of disclosed documents. That wealth of material was digested and analysed in an impressively comprehensive 111-page judgment in which the Judge methodically pieced together a story which has since been described by commentators as 'remarkable' and 'extreme'.

In its essentials, the story was as follows. Kevin Reeves was an entirely self-made businessman, worth about £100m by the time of his death in 2019.

This 'rags to riches' success was particularly impressive because Kevin had been given up by his mother to the local convent as an orphan, and was illiterate throughout his life. He had left school by the age of 12, and probably rarely attended even during his earliest years. His lack of education did not hold him back, however, and he had an uncanny knack of spotting and exploiting any business opportunity, trading in cars, shares and currencies, and gaining his greatest financial profits from instinctive property investments in land with development potential. He was universally agreed to be 'the toughest, hardest man in business that you were ever likely to meet'. His tough character caused various schisms within his family, including divorce from his wife, and major fallings-out with two of his four children, including for several years his daughter Louise (the claimant).

The litigation was about the validity of a will dated 7 January 2014, the contents of which came as a surprise to many who knew Kevin, including his son Bill, the closeness of whose relationship with his father is illustrated by the fact that Bill offered to donate one of his lungs to help prolong the life of his father who suffered from chronic pulmonary disease. The 2014 will left 80% of Kevin's residuary estate to Louise, and 20% to his other daughter Lisa. This represented a 'dramatic change' from his previous will dated 18 April 2012 by which Kevin left his residuary estate 80% between Louise, Lisa and Bill, and 20% to the two children of his fourth child, his estranged son Mark. A striking feature of the case was that Mark gave evidence in support of Louise and against the interests of his own two children.

Both wills were prepared by the same solicitor, Daniel Curnock of CGM solicitors in Kevin's home town, Southampton, who gave evidence in support of Louise. It became apparent through diligent efforts by Bill's legal team to obtain disclosure and through cross-examination at trial not only that Daniel Curnock and Louise were familiar with each other before the 2014 will was prepared, but that they had both sought to conceal the true extent of their relationship.

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The will file was gradually pieced together and even in its incomplete form showed that Louise was extensively involved in, and indeed controlled, the communication of Kevin's purported instructions for the 2014 will to Mr Curnock. For his part, Mr Curnock failed to confirm that those instructions originated from Kevin, or to follow the basics of good practice when taking will instructions. For example, his evidence was that he took initial instructions for the 2014 will by annotating and striking through parts of the 2012 will on the original testamentary document.

Bill and his nephew challenged the validity of the 2014 will on the basis of (1) want of knowledge and approval and (2) undue influence by Louise. An initial challenge to due execution was abandoned following receipt of an expert report.

The facts pleaded and the points argued in support of Bill's claim included a challenge to the honesty and integrity of Mr Curnock and of Louise. Bill asserted that Mr Curnock's file notes were unreliable, and included *'file straighteners'*, i.e. a paper trail which could be used later to justify the terms of the 2014 will. There was no consistent or satisfactory evidence from either of the solicitors present when the will was signed that it had been read over to Kevin or confirmed by him.

In his judgment, Michael Green J found that Louise had failed to discharge the burden of proving that Kevin had known and approved of the 2014 will, but did not accept that it had been procured by undue influence. He propounded a theory of how the 2014 will had come into being: Louise must have calculated that the risk of her illiterate father actually being able to read the will for himself was very small, and that he would have relied upon her and Mr Curnock faithfully to record his instructions for the will. Kevin was comfortable with figures, and would have thought of his will in terms of the 80/20 split. The Judge speculated that '*this meant that if the 80/20 split was preserved in the 2014 will, it could mask the substantive alterations that were really being made'*, and that this was the only way in which the split was comprehensible. Louise had struggled to provide a justification for the 80/20 split in her favour, and Mr Curnock was unable to explain it. The Judge concluded that the 80/20 split in the 2014 will was itself evidence that Kevin did not know and approve of its contents (in addition to the quantity of other evidence).

The Judge stated at [348] that a finding that Kevin did not know and approve of the contents of the 2014 will *'carries with it the strong implication that [Louise] engineered an extraordinary fraud on [Kevin]'* by getting him to execute the 2014 will without knowing its terms or or thinking they were something else. On a point of law, however, it was not necessary for Bill to prove that this was what happened and that it was fraudulent or dishonest. Bill could not know exactly what happened, and could fairly say that the court should simply examine whether Kevin knew and approved of the contents of the 2014 will.

At a consequentials hearing on 4 March 2022, the Judge ordered Louise to pay 70% of Bill's costs on the indemnity basis. Although he was clearly the winning party, Bill's costs were discounted principally to reflect his lack of success in the issue of undue influence, notwithstanding that the Judge found that it had been reasonable for him to run undue influence and that it had provided further evidence in support of the case on knowledge and approval. As to the basis of assessment, the Judge followed the same approach as that of David Richards J (as he then was) in *Franks v Sinclair* [2006] EWHC 3656, and said that he found it difficult to see how Louise's conduct in bringing a case such as this, to propound a will knowing it was false and did not truly represent her father's wishes, was not out of the norm. He continued *'otherwise, it is difficult to see what sort of conduct would justify indemnity costs. Fraud was not pleaded against [Louise], but I was clear in my judgment that [Louise] knew exactly what she was doing in getting her father to sign a will in her favour'.*

Louise did not apply to the Judge for permission to appeal, but applied to the Court of Appeal setting out six grounds of appeal, mainly on the facts but including an appeal from the point of law referred to above. On 27 June 2022 the Court of Appeal refused permission, rejecting all six grounds.

Constance McDonnell QC
Barrister