

Professionally drafted will overturned for want of knowledge and approval

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CATEGORY:
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Burgess v Hawes was reported in the Daily Telegraph under the heading 'Magistrate ordered to repay £18,000 spent from frail mother's accounts'. [Click here](#) read the full article.

The case is of interest both for the recovery of lifetime payments and for the contested probate element of the proceedings.

Mrs Burgess had three children and her 1996 Will divided her estate equally between them. However, in December 2006 she attended a solicitor's firm with her younger daughter (a local magistrate) and instructions were given for a new will (signed in January 2007) which excluded the son.

Mrs Burgess died in May 2009. The son and his other sister challenged the validity of the 2007 Will (the sister doing so even though she actually benefited from the 2007 Will). They also challenged the validity of numerous lifetime payments from their mother's accounts to their sister and her immediate family.

Her Honour Judge Karen Walden-Smith found the 2007 Will to be invalid on the grounds of lack of testamentary capacity and of want of knowledge and approval. She also ordered that approximately £18,000 plus interest be repaid to the estate.

The case is to be reported in Wills and Trusts Law Reports, not least as it appears to be the first time that a professionally drafted will has been overturned on the ground of want of knowledge and approval since the Court of Appeal decision in *Gill v RSPCA*. A more detailed note will be provided in the next ILM Legal Update.

[Follow this link](#) for critical commentary of the will draftsman.

The Milton Keynes citizen reported the case under the heading 'Magistrate spent sick mum's cash'. [Click here](#) further detail.

[Paul Hewitt](#) and [Natasha Owen](#) for Peter and Elizabeth Burgess and instructed [Penelope Reed QC](#).

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