

Judge holds handwritten diary note is a valid will

05 AUGUST 2015

Paul Hewitt

PARTNER | UK

CATEGORY:

ARTICLE

The Sheriff Principal of Lothian and Borders has found that a signed holograph entry by a deceased into a notebook diary is a valid Will. The Sheriff Principal overturned the judgment of the Sheriff who had refused the deceased's sister's petition to be confirmed as executor of her sister's Will.

The deceased was one of six siblings and was divorced, with no children. She was recognised to be an alcoholic, but there was no evidence to suggest that she lacked capacity. An entry in her notebook diary some months before her death in 2012 had held that all her "wealthy remains" were to be left to one of her sisters, who she then clearly referenced by name. She had finished the entry with the words 'IT IS MY WISH' and her signature.

The Sheriff at first instance had held that, since there were a number of similar entries both before and after the entry in question, there was no reason to suggest that the entry in question should be given special status. However, the Sheriff Principal considered that it was significant that the crucial entry was signed. She said that the Sheriff at first instance had placed too much emphasis on the entry being an informal document, and, as such, had failed to give its substance due consideration. The Sheriff Principal held that the document was in the deceased's hand, set out her wishes and testamentary intentions, and was duly signed. All the elements of a valid Will under Scots law were present. The other entries were not held to be relevant, but, in any case, were consistent with the wishes expressed.

The ruling may be important for charity legatees who could find themselves inheriting, or being removed from existing wills, by virtue of similar, informal testamentary writings in Scotland.

Authors

Paul Hewitt

PARTNER | LONDON

Trust, estate and inheritance disputes

 +44 20 7597 6197

 paul.hewitt@withersworldwide.com