The will where everything went wrong

03 OCTOBER 2017

CATEGORY:
ARTICLE

In *Vucicevic v Aleksic*, giving a succinct forty-nine paragraph judgment, HHJ Matthews addresses a handwritten will with a range of problems of interpretation, including the obliteration of a legacy and subsequent amendment, as well as issues of validity, capacity and conflicts of law.

Background

Mr Veljko Aleksic was born in Montenegro in the 1920s and moved to England shortly after the Second World War. When he died in 2014, aged 91, he left an estate of around £2.75million, having made a number of successful property and financial investments. He was survived by two siblings and a number of nieces and nephews, all of whom lived in Serbia and Montenegro.

Veljko had made his own will in 2012. After his death it became clear that there were a number of problems. This was not helped by the fact that, as the Judge noted of the will, 'the grammar is faulty, words are often misspelt and punctuation misplaced', although he hastened to add that 'bad English can still make a good will'. The will was signed but only dated '2012'. Before the hearing, one of the witnesses made an affidavit of due execution to confirm that the will had been validly executed. The question of a possible lack of testamentary capacity was resolved by a medical report from Veljko's GP which indicated that, in late 2012, he appeared to have capacity. Veljko's personal representatives applied to the court for rulings on the parts of the will that gave rise to difficulties.

£10,000 legacy to Brit Cancer Research

The will included a legacy of £10,000 to *'Brit. Cancer Research'.* No such organisation exists.

The personal representatives could find no evidence of a connection between Veljko and any particular cancer charity. Therefore, they applied to the Attorney General's Office for the legacy to be disposed of by Her Majesty under the Royal Sign Manual. The legacy was then divided between a number of cancer research charities. The Royal Sign Manual procedure applies where the will contains a gift to charity, but the identity of the charity is unclear.

Legacy to Alex Dubljevic

The will also included a pecuniary legacy to_ 'Alex Dubljevic in Cardiff (Barrister)'._ However, the amount of the gift had been crossed out, and in its place, a telephone number and_ '£2,000. Two'_ had been handwritten. Alex was an old friend of Veljko and had helped him in the past, for example acting as an interpreter for Veljko when he visited doctors for his cancer treatment.

The personal representatives sought an opinion from a forensic document examiner to try and determine the words that been crossed out. In her report, the examiner was unable to decipher whether the original legacy to Alex was £8,000 or £80,000. She thought that the phrase '£2,000. Two' had been written in a different pen to the rest of the will and had been added after the will had been signed.

Alex had told the personal representatives that he thought that he should receive £80,000.

The Judge decided that Veljko had intended to revoke the initial legacy (of £8,000 or £80,000) to Alex and to substitute in its place a legacy of £2,000. The Judge took into account the fact that Veljko had not crossed out Alex's name, and so he presumed that Veljko still wanted him to benefit. However, the significant problem here was that the substitution of the initial legacy with £2,000 was not effective because the change to the will had not been attested correctly. This meant that the earlier, crossed out gift remained valid. This is known as the doctrine of dependent relative revocation. Usually, where the original wording of a legacy has been obliterated with no attempt to substitute other wording, the will is read as if the legacy had been deleted entirely from the will.

In making his decision, the Judge considered photographs of the obliterated entry under infra-red lighting to help him to determine the most likely sum of the initial legacy. He also looked at the legacy in the context of the other legacies that Veljko had made, for example to his nieces and nephews. The Judge decided that Veljko had made a valid gift of £8,000 to Alex.

Gift of three houses

The most problematic gift in the will was as follows:

'All three property. House in Djenovice to Serbian Ortodox Church in Montenegro. And in Cardiff. 8, Wordsworth Avenue. CF 24. 3FQ. And in London, 17, Fordwich Road, NW2. 3 TN. All to Serbian Ortodox Church. Vladika Amfilohije to be in charge. Benefit from it to go to Kosovo, for the people in. Need. Especially children. And all the money. Which is left (after Custom & Inland Revenue). I am having full confidence in Vladika Amfilohije Radovic that is going in right place in Kosovo only. With the consultation and discussion. With Serbian Patrijarch and church authority in Kosovo, with one, condition. House in Djenovice not aloud to sell Till. 2040. Houses in the UK Britain Vladika is aloud to sell at any time, if he wish.'

Issue 1: What was the 'Serbian Ortodox Church'?

It was not clear what exactly Veljko meant by the _'Serbian Ortodox Church_'. Was he referring to the headquarters of the church in Serbia, the branch in Montenegro, or the church in London to which Veljko had links? Vladika Amfilohije is a Senior Bishop in Montenegro but he also had links to the London church.

Before the case reached the Court, the Serbian Orthodox Church in London, the Serbian Orthodox Church in Serbia and Veljko's personal representatives agreed between themselves that the Serbian Orthodox Church in London, a registered charity, should benefit (which had obvious tax advantages).

Issue 2: Trust or absolute gift?

The second issue was whether Veljko intended the gift to the Church to be held on trust by the Church for those in need in Kosovo or whether he had intended it to be a gift to the Church absolutely. The will had stipulated that the property was not to be sold until 2040 and that he intended that the gift would benefit children in Kosovo. The Judge held that Veljko 'was seeking to control what happened to' his gift and so he did not intend it to be an absolute gift.

Issue 3: Who was the trustee?

The Judge then had to consider who Veljko intended to be the trustee of this trust. Veljko had stated that Bishop Amfilohije was to 'be in charge' and he said that he had 'full confidence' in him. However, the Judge did not think that this was sufficient to determine that Veljko wanted Bishop Amfilohije to be the trustee. He thought that even if the Bishop was unavailable, Veljko would have wanted the gift to be valid. Instead, he decided that Veljko's intention was that _ 'if and to the extent that the Bishop was available to be involved, then he should be the person who, in consultation with the patriarch and other church authorities in Kosovo, made the significant decisions about the application of the benefits for the stated purposes'._ On this basis, the Judge decided that the Serbian Orthodox Church was the trustee of the trust, and so Veljko had created a *'trust of the gift to the Serbian Orthodox Church in London, on trust for people in need, especially children, in Kosovo.'*

Issue 4: 'and all the money. Which is left'

Finally, the Judge considered the use of the phrase_ 'and all the money. Which is left'._ He had to determine whether this was a gift of the residue of the estate or simply Veljko's cash deposits. The Judge decided that because this phrase came at the end of the will, because the will was handwritten and in a language which was not Veljko's own and because the common translation of the English word_ 'money'_ into Serbian included other assets such as shares, Veljko intended to use the word 'money' to cover the remainder of his estate.

Conclusion

This case highlights the problems of interpretation which personal representatives may face when confronted with a *'difficult'* will, where the testator's intentions have not always been clearly expressed. Sometimes, even though the parties have done their best to help move matters along and agree any disputed points, the personal representatives have no real alternative but to apply to the Court to give a ruling on the matter.

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