

Revenge of the dogs – a tail of undue influence?

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A fall-out between two brothers over where their mother should live spiralled from suspicion, to confrontation and then into litigation.

The story

Following her husband's death, Mrs Brindley moved from her Cornwall home to live with her son Alan.

When Alan's wife fell ill, Mrs Brindley moved in with her other son, Gordon.

What appears to have been a simple misunderstanding as to whether Mrs Brindley was to stay with Gordon for a few days or longer quickly span out of control.

At one stage, the police were called, as was the local authority adult safeguarding team.

Gordon even started County Court proceedings to force Alan to return Mrs Brindley's belongings and pets.

Mrs Brindley (described by both her sons as having a '*strong personality*') instructed solicitors to transfer her Cornwall home into joint names with son Gordon. Her existing will left everything equally between two sons. In light of the property transfer, the solicitor advised her to alter her will to maintain that equality of treatment.

Three months later Alan delivered Mrs Brindley's belongings. But her two dogs were covered in fleas. One, Tramp, needed an operation to remove teeth and deal with his fur. According to Gordon, '*it was almost on the borderline of neglect*'. Sadly Tramp died on the operating table.

Despite the solicitor's advice that Mrs Brindley change her will to restore equality between her sons, Mrs Brindley never did so.

After Mrs Brindley's death, the Cornish house passed to Gordon by survivorship (ie in addition to his half share of his mother's estate).

Alan claimed that the transfer of the house to Gordon should be invalidated because Mrs Brindley had been unduly influenced by Gordon. If successful, the house would be part of the estate and be divided equally between Gordon and Alan.

Gordon argued that his mother transferred the house to him freely because of the repair and maintenance which he carried out. Perhaps surprisingly, the Court agreed with Gordon.

Alan also claimed that Gordon had spent (or unduly influenced Mrs Brindley to spend) £275,000 of Mrs Brindley's money. This dispute is to be resolved at a later trial.

Gordon claimed that Alan had failed to deal properly with their father's gold sovereign collection, allegedly worth about £53,000. Mr Brindley died in 2013, before Alan and Gordon fell out. The judge decided that Mr Brindley did not own any gold sovereigns at this death, so Alan should not be criticised for failing to deal with them.

What do you need to show undue influence?

There are two types of undue influence:

- actual undue influence (eg coercion); and
- presumed undue influence (if there is a relationship of trust and confidence and a transaction that calls for an explanation, there is a presumption that the transaction was brought about by undue influence).

Alan did not suggest that Gordon coerced Mrs Brindley into making the transfer, so there was no allegation of actual undue influence.

The judge agreed with Alan that there was a relationship of trust and confidence between Gordon and Mrs Brindley because '*Mrs Brindley was, without more, prepared to agree a course of action proposed by Gordon*'. Such a relationship needed more than '*the mere fact that Mrs Brindley trusted Gordon to look into her legal affairs*'. However, shortly after moving in with Gordon, Mrs Brindley made a will on similar terms as her previous one and revoked her lasting power of attorney. He could find '*no evidence to suggest that Mrs Brindley independently turned her mind to [her will and LPA] so soon after moving to live with Gordon*'. Mrs Brindley did so because she had 'come to depend on Gordon as her adviser' and was '*prepared to simply adopt the course proposed by Gordon*'.

The transfer of the house was significant and so was clearly a transaction that called for an explanation. Particularly when Mrs Brindley previously made clear that she wished her sons to benefit equally from her estate.

However, this was not enough for Alan to win his case.

Mrs Brindley had instructed a solicitor. He had explained the effect of the transfer, including the difference between owning a property as joint tenants or tenants in common. He understood from the meeting that Mrs Brindley's intention was that the transfer to Gordon was '*part and parcel of a larger transaction by which, ultimately, there would be equality*' between her sons. The fact that she didn't follow through with the next stage didn't invalidate this one.

The judge decided that the advice given by the solicitor to Mrs Brindley had an '*emancipating effect*' on Gordon's actions and Mrs Brindley's transferred the house 'of her own free will'.

Particularly important was that Mrs Brindley approached the meeting showing '*uncertainty about how she wanted to dispose of the Cornish property*' and so it was '*likely that [the solicitor's] advice operated on her mind*'. The judge also found that Mrs Brindley was '*capable of understanding [the solicitor's] advice...and freely acting on it*'.

Mrs Brindley did not go on to change her will (and so bring about the equality she said she wanted between her sons). This was explained by the 'apparently complete breakdown in relations...between her and Alan'.

Summary

The two sons, who both cared for their elderly mother for significant periods, found themselves so involved in her life that they sought to control her and, it seems, their inheritance.

The solicitor's role in the transfer was Gordon's saving grace, even though the judge made clear that sometimes the relationship of trust and confidence is so complete that even third party advice cannot 'save' the transaction.

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