

Sister defeats brother's appeal in Banks V Goodfellow England and Wales estate dispute

Synopsis: A judgement from the England and Wales High Court (EWCH) has been upheld disallowing two wills on the grounds of testamentary incapacity.

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This case is about the test for incapacity and is about a lady who made two wills not long before her death. The wills were made following the death of one of her daughters, where she left all of her estate to her son and disinherited her remaining daughter.

Her remaining daughter, Susan Bond, challenged the wills stating that her mother suffered from severe depression following the death of her daughter and had “insane delusions” about Bond.

In the first trial, Susan’s brother, John, claimed that his mother had capacity. There was never a full psychiatric assessment made, but all clinicians who had treated her found her to have capacity.

However, the EWHC found in favour of Bond and ruled the wills to be invalid, which implied that the deceased died intestate and the estate was to be split evenly between the brother and sister.

John appealed on the grounds that the wrong approach for determining capacity had been applied. The test used should have been under the Mental Capacity Act 2005 and not under Banks v Goodfellow. However, this was dismissed and the original ruling applied meaning that his mother was deemed to die intestate.

Comment

This judgement confirms that, once again, the proper test for capacity is Banks v Goodfellow, rather than under the Mental Capacity Act 2005. Applying Banks v Goodfellow meant, in this case, that the brother bore the burden of proof and would have had to show that no delusion influenced the wills.

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