

A case where a missing will was presumed by the court to have been revoked

Synopsis: The case of *Packer v Packer*, which is the first successful application of the presumption of revocation of a will for almost two decades.

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In this case, [Packer v Packer \(Re Estate of Stephen George Packer\) \[2025\] EWHC 461 \(Ch\) \(28 February 2025\)](#), Stephen Packer died in July 2022 and was survived by his wife, Debra Packer, and his sister, Lynn Packer. The two women apparently had a good relationship before his death, but, after his death, their relationship deteriorated. The main reason was the distribution of the estate of Joan Packer, Stephen and Lynn Packer's mother.

Joan Packer had died in 2020, leaving Stephen and Lynn Packer the £117,000 residue of her estate in equal shares. But Lynn Packer, acting as executor, claimed that her brother, Stephen, had signed a disclaimer giving her the full amount. Stephen Packer's wife, Debra, contested this, by way of a separate action she brought in 2023. That dispute is still being litigated, having been temporarily adjourned pending the dispute over the Stephen Packer's will.

Another dispute between the two women is also in progress, over whether Stephen and Debra Packer's matrimonial home was validly transferred from Stephen Packer's sole name to both their names as joint tenants in 2012, as Stephen Packer's wife, Debra, contended. Stephen Packer's sister, Lynn alleged that this transfer was forged by Debra Packer without Stephen Packer's consent.

The judgment just handed down concerns only Stephen Packer's will.

In this dispute, Stephen Packer's wife, Debra alleged that her late husband died intestate. She had, therefore, applied to the England and Wales High Court (EWHC) for letters of administration. Stephen Packer's sister, Lynn contended that he executed a will on 21 February 2022, which she had helped write for him. No signed version of this will was found after his death, although Lynn Packer produced unsigned drafts of both that will and an earlier one.

Lynn Packer claimed the 2022 will was executed and offered two different accounts of the occasion: one that it had originally been attested by family members and the other that Stephen Packer had signed the will and then taken it away to be witnessed by unknown third-party witnesses. However, the EWHC rejected her evidence. It found it likely that Lynn Packer handed her brother, Stephen, the draft will created by her and had encouraged him to take it to be independently witnessed, but it was not signed at all on 21 February 2022 or afterwards.

However, the EWHC also considered the situation that arose if the missing will had been validly executed and attested on 21 February 2022. The inevitable question arose: what happened to it? Even if validly executed, the question still arose: what happened to the drafts? The law has developed a presumption in such cases where

the court cannot answer this on the evidence: the presumption of revocation, effectively summarised by the Judge as...

- When a will is last known to be in the testator's possession, but is not found on their death, it is presumed the testator destroyed the will with the intention to revoke;
- The presumption can be rebutted, on the balance of probabilities, by circumstances pointing to the contrary. The burden of proof lies with the person seeking to propound the will (i.e. Lynn Packer);
- The strength of the presumption will vary depending on the character of custody the testator had over the will.

The Judge's conclusion was based on the "unusual feature" of the case: even if Stephen Packer had created a valid will, he was nevertheless told by his sister, Lynn, that it needed to be independently witnessed. In other words, the document he was given was, as far as he was concerned, incomplete. When viewed alongside Stephen's reluctance to make a will and spend money on solicitors, it was more likely he destroyed it himself. Given the thorough searches made by his wife, Debra, and others, and findings made about the custody Stephen Packer kept of important documents, the simple loss of the will was not the likely scenario.

Not only was the presumption of revocation unrebutted, but the Judge was prepared to reach the same conclusion on the facts.

[Guildhall Chambers](#), which acted for the claimant, said that this is the first case in which presumption has been applied 'obiter' and gone unrebutted since the case of *Broadway v Fernandes* (2007 EWHC 684 Ch), adding... "Packer v Packer is also a reminder of how presumptions still hold providence. The necessary absence of the one person who actually knows the truth, the deceased, means that factual presumptions continue to play a key role in probate claims whilst their application has faded in other areas of the law. Even so, as the judgment shows, judges should still be invited to make findings on the likely facts, rather than just fall back on presumptions."

[Also known as obiter dictum. 'obiter' refers to a judge's comments or observations, in passing, on a matter arising in a case before them which does not require a decision. Obiter remarks are not essential to a decision and do not create binding precedent. However, obiter remarks of senior judges, for example, may be indirectly instructive or persuasive, especially in areas in which the law is developing.]

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