



**ST JOHNS
BUILDINGS**
BARRISTERS CHAMBERS

TESTAMENTARY CAPACITY:

HUGHES v PRITCHARD IN THE COURT OF APPEAL

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INTRODUCTION

In [Hughes v Pritchard and others \[2022\] EWCA Civ 386](#), the Court of Appeal overturned the decision of the trial judge in a probate claim (see [Hughes v Pritchard and others \[2021\] EWHC 1580 \(Ch\)](#)) that a testator lacked testamentary capacity, concluding that the judge's findings on that subject were "*not open to him on the evidence*".

The judge (HHJ Jarman QC, sitting as a Judge of the High Court) had concluded that the last will of the Deceased was invalid on the grounds of a lack of testamentary capacity, despite the will-drafting solicitor and medical professional determining that he did have such capacity at the time, and despite an expert report supporting that contention.

The Court of Appeal's decision is therefore a very rare example of an appellate court reversing the factual conclusions of the trial judge. The judgment critically assesses the trial judge's assessment of the evidence by reference to the key authorities in this area of practice.

BACKGROUND

This case concerned the estate of Evan Richard Hughes ("the Deceased") who died in March 2017, and the disputed validity of his last will dated 7th July 2016 ("the 2016 Will").

The Deceased had three children: Gareth, Carys and Elfed. Elfed tragically took his own life about 9 months prior to the execution of the 2016 Will. By his previous will ("the 2005 Will"), the Deceased had left his shares in the family business to Gareth and Carys and left all his farmland to Elfed. The trial judge (HHJ Jarman QC) found that Elfed had always been told that he was being left the farmland, and that in reliance of this promise, he worked very long hours on the farm, as well as working for the family company.

About six months after Elfed's death, the Deceased executed the 2016 Will. At this time, he was said to be suffering from moderate dementia. The main change made in the 2016 Will was that the Deceased's farmland would be divided between Gareth and Elfed's estate (with other property going to Carys), with the shares to the family company, which had by then fallen on hard times, being divided between the Deceased's grandchildren. The solicitor dealing with the 2016 will arranged for a capacity assessment to be carried out before the new will was to be executed, in accordance with the Golden Rule. The GP providing the assessment was given a copy of the proposed 2016 will and the existing 2005 will. Following a meeting with the Deceased, the GP confirmed that he had no concerns about his capacity to change his will and confirmed that he would be happy to act as a witness.

Following his father's death, Gareth, sought to propound the validity of the 2016 Will. However, the Defendants (Elfed's widow and sons) brought a counterclaim, arguing that the 2016 Will was not valid as (amongst other arguments) he lacked testamentary capacity at the time it was made.

HHJ Jarman QC concluded that the Deceased did not have testamentary capacity despite the conclusions of the will-drafting solicitor, the GP who assessed him at the time, and the capacity expert to the contrary; in reaching this finding, he preferred the lay evidence of the Defendants and gave little weight to the evidence of the professionals involved.

THE COURT OF APPEAL'S DECISION

Gareth appealed. The Court of Appeal (Moynan, Asplin and Elisabeth Laing LJ) overturned HHJ Jarman QC's decision. Although the Court was mindful that an appeal court should be extremely wary of overturning the trial judge's evaluation of the facts, and that the relevant standard required the Court to be satisfied that the judge's evaluation was outside the reasonable conclusions which he could have reached on the evidence before him - or was one which, in other circumstances, a jury could not reasonably have arrived at - it had been surmounted in this case.

The trial judge had been wrong to downplay the importance of the evidence of the will drafting solicitor, who had been "meticulous" in dealing with the matter and had taken the precaution of obtaining an assessment of the Deceased's capacity from a GP (which she had by extension been entitled to rely upon). That GP had seen the Deceased on multiple occasions and had been satisfied as to his capacity. Whilst the GP did question his own assessment at trial, he did not repudiate it, and there had been no grounds for the trial judge's essential rejection of it.

This is therefore a rare case where the Court of Appeal found that a trial judge's evaluation of the primary facts was outside the reasonable range of outcomes available to him.

The Court considered in detail how a trial judge should approach the determination of testamentary capacity and commented on the most important authorities in this area of law. *Hughes v Pritchard* will therefore be of considerable assistance to practitioners in this area for an authoritative statement as to how a court should approach the assessment of testamentary capacity and the relevance of the Golden Rule in relation to that issue.

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