SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT FALKIRK

[2025] SC FAL 102

FAL-A128-23

JUDGMENT OF SHERIFF CHRISTOPHER M SHEAD

in the cause

LOIS BOYD

Pursuer

against

LORA BOYD OR MURRAY OR GORLEY

Defender

Pursuer: Symon
Defender: McColl

FALKIRK, 18 August 2025

The sheriff, having resumed consideration of the case, sustains the defender's third and fifth pleas-in-law, repels the remaing pleas-in-law for the defender and the pursuer and grants decree of absolvitor reserving meatime the question of expenses pending futher orders of the court.

Finds in fact:

1. The pursuer and the defender are the daughters of the deceased Isabel Mary Hughes or Boyd. They are the deceased's only children.

2. The deceased executed a will on 24 September 2002. She died on 14 January 2023.

3. The deceased was a meticulous woman particularly in relation to matters of business.

4. Following her death the pursuer found among the deceased's possessions a copy letter dated 25 January 2009. That copy consisted of one page.

5. The intended receipient of that letter was not Campbell Smith WS LLP.

6. The orginial letter had more than one page. That letter was composed as a letter of instruction to another firm of solicitors seeking to alter the deceased's earlier will. The letter was not sent.

Finds in fact and law:

7. That the copy letter is not an informal codicil.

NOTE

[1] I am grateful to parties for their written and oral submissions. I have taken account of those submissions in reaching my decision. I reserved judgment in terms of rule 12.2(4)(b). The rule requires that I provide a note to the interlocutor stating the grounds for my decision. I do not intend to set out the evidence or the submissions in full but rather record the main points in so far as is necessary to reflect the requirements of the rule and to explain the reasons for my decision.

A summary of the evidence

[2] I heard evidence from four witnesses. Affidavits had been lodged and were adopted by the respective witnesses. Much of the evidence did not throw any great light on the issues the court is being called upon to decide.

The pursuer

[3] The pursuer confirmed that her mother had died on 14 January 2023. Shortly after her death she was looking through her mother's papers for a copy of her will. She then found the copy letter which is the subject of this dispute. The pursuer was unaware that her mother wanted to cut her sister out of the will. Her mother had not told her that she had intended to do so.

[4] When she consulted the agents, Campbell Smith, the solicitor told her that they held her mother's will and had not received the disputed letter.

[5] She was "very confident and satisfied that this was a letter written by my mum and duly sent to Campbell Smith." Her mother always used to keep a copy of any correspondence that she sent out.

[6] She was "also very confident" that her mother did want to change her will because of the breakdown of the relationship with the defender. Her mother had devoted considerable time and effort to helping care for the defender's children and had a spent a lot of money doing so. This had been a great strain on her.

[7] In early 2006 she and her mother had arranged a kind of informal birthday celebration for the defender. She and her mother were late and the defender was furious with her. When her mother tried to calm her down and apologise the defender shoved her away.

[8] Later in the same year the defender had told her mother than she and her new partner intended to move in with her. Her mother had told her that would not be possible since the pursuer was due to be moving in with her. Her mother said that she had had enough and she could not cope with the defender and her issues. As far as she was concerned that was an end of their relationship.

[9] She also recalled an occasion when the defender's daughter Louise came to her mother's door asking to stay. Her mother was saying that she couldn't stay and that she should discuss the matter with the defender. She went to the door and said words to the effect that she would have to discuss the matter with the defender. She then shut the door.

[10] In cross-examination her interpretation of the terms of the copy letter was challenged. In response she said that it was her assumption that it had been addressed to Campbell Smith and she was confident that the solicitors would have received the principal.

[11] Her mother had never told her about the letter or discussed its contents nor had she said that she was going to cut the defender out of her will. She did not know that her mother had written a letter until she found a copy of it.

[12] She was referred to condescendence 4 of the record and to the averment in the second sentence. In response she said that her mother had not spoken to her about the terms of the will and she had not stated her exact wishes to her.

[13] She did not believe that her mother would have made enquiries with the solicitor in connection with the terms of the copy letter.

[14] The pursuer was asked about the birthday incident in 2006 and it was suggested to her that she was wrong about that having occurred. She replied that she was not wrong.

[15] She recalled that her mother had turned her granddaughter away from the door twice but she had not done so. She specifically denied having told her to "fuck off."

[16] She had not told the defender that their mother had died. It had been her mother's decision to end the relationship with the defender. They were estranged at the time of her death.

[17] In re-examination she said she thought she had been respecting her mother's wishes by not contacting the defender to tell her the news of the death.

Kathleen Raeburn

[18] The witness had been friends with the deceased. They had been neighbours for many years. She moved away in 1996 but had kept in touch with the deceased.

[19] Around 2007 she had learned of the breakdown of the relationship between the deceased and the defender. She remembered speaking to her again about the subject in 2011. The deceased said she had paid off debts her daughter had incurred. She was upset about what had happened and "had had to pull away" from her daughter to protect herself. There was no discussion about the deceased having changed her will.

[20] They had met again sometime after 2012 for lunch. The deceased confirmed that she was still not seeing the defender. She mentioned the incident involving her granddaughter Louise. She had turned her away from the house saying that this was something her mother had to sort out. She had been upset about having to do that.

[21] Her impression from her discussions was that the relationship with the defender had broken down over the amount of money she had been spending on the defender and her family.

[22] In cross-examination she said that in 2011 the pursuer was living with the deceased. She recalled being upset about what she was being told at that time and that it was a bit of an "overload". She accepted that she could not recall clearly everything that had been said.

[23] When they met for lunch she recalled the deceased being very upset at having turned her granddaughter away. They had been very close. She felt she had to do it because she was estranged from the defender. Her attitude seemed to be that the defender should communicate with her directly. The deceased had told her that the pursuer had been there on that occasion.

[24] In re-examination she said her granddaughter had turned up with another child she did not know. This she found upsetting and she thought that the pursuer had had to step in. The deceased was upset over this incident.

The defender

[25] In 2006 the pursuer had moved back in with her mother and lived there until her mother's death. The defender's relationship with her mother had been good until her sister moved into her mother's house.

[26] Since 2006 she had not seen her mother. She had tried phoning her from time to time but her mother never answered. She had also written to her on a couple of occasions but did not receive a reply.

[27] She had not taken advantage of her financially nor had she otherwise been abusive.

[28] There was no birthday event in January 2006 and there was no incident as described by the pursuer. She had not tried to move back in with her mother in 2006.

[29] For all practical purposes her relationship with her mother ended in 2006. The pursuer had not made her aware of her mother's death in January 2023.

[30] As regards the copy letter she thought it was in her mother's handwriting. If it had been sent she was puzzled as to why her mother had not followed it up. She was a "stickler" for doing things and finishing them. Her mother had taught her that when writing an official letter to put both her own name and address and the name and address of the addressee as well. The latter was not included in the copy letter.

[31] In 2006 she and her children had been going to move in with her mother. About a week beforehand her mother had called her and said she could not move in. The pursuer

had nowhere to live at the time and so she was going to move in with the deceased instead. The defender was upset by this call.

[32] Looking back she was still upset about not having been in touch with her mother since 2006. She did not know whether her mother had known that she had tried to get in touch with her by letter on more than one occasion.

[33] In cross-examination she accepted that she had had no direct contact with her mother since 2006 although she had tried phoning and writing to her. She rejected the suggestion that they had fallen out with each other. Before 2006 they had had a good relationship. She attributed the breakdown in the relationship to the pursuer.

[34] She said that she had lacked the courage to go to her mother's door and that she had had a lot going on in her own life and with her own children. Her mother had made no attempt to contact her.

[35] She accepted that her mother had helped with looking after her children but denied the suggestion that her mother had raised her children for her. The deceased saw her granddaughter every weekend and she was happy to help and see her grandchildren. It was not a strain on her.

[36] She acknowledged that her first husband had been bankrupted. The debts were in his name and she was not liable for his debts. She had been in a small amount of debt but she had not asked her mother to help with that. Her parents had loaned her husband about £900 to pay a tax bill. After the sale of the family home she had received about £33,000.

[37] She was referred to Ms Raeburn's affidavit and her recollection that her mother told her she had had to pull away from the defender. She said that was not what had happened.

[38] There had been no birthday event in 2006 and she had not been living at her house at the time. She had not stormed off in response to her mother and the pursuer being late.

[39] She denied that anything else had happened to cause the rift with her mother.

[40] The defender accepted that the 2009 letter was in her mother's handwriting. The terms of the letter were a surprise despite the fact that she had had no contact with the deceased since 2006.

[41] She rejected the suggestion that she had "overwhelmed" her mother. She said she could not go and visit her mother because her sister was so aggressive. She did not have the strength to confront her sister. She repeated she had not fallen out with her mother and she thought everything would be okay.

Louise Murray

[42] She and her mother (the defender) had a good relationship with the deceased. That changed in 2006 when she was 10. That year her aunt, the pursuer, moved in with the deceased.

[43] Before that she had seen her grandmother every week and would stay with her each weekend. She considered her aunt to be "overbearing and controlling."

[44] Her grandmother was a meticulous person. She was "very much a details person."

[45] In about 2011 she went to visit her grandmother. Her grandmother answered the door and seemed pleased to see her. However almost immediately her aunt appeared, pushed her grandmother to one side and told her to "fuck off". The door was then slammed shut.

[46] She had gone to see her grandmother with a view to trying to fix the relationship between them.

[47] In cross-examination she said that she had had a very positive relationship with her grandmother before 2006. She was caring and loving and they loved each other. They had seen each other about four times a week.

[48] She blamed the pursuer for the breakdown of the relationship.

[49] When she went to her grandmother's house in 2011 she wanted to help repair the relationship. She denied that she had gone there trying to move in with her grandmother because she had fallen out with the defender. The pursuer acted aggressively and told her to "fuck off".

[50] She rejected the suggestion that she was trying to convey a false picture to the court out of loyalty to the defender.

A summary of the submissions

The pursuer

[51] There was no dispute between the parties as what required to be proved before an action for proving the tenor could succeed: the terms of the document, the execution of the document and the circumstances of its loss. Reference was made to *W v W* 2022 SLT (Sh Ct) 64.

[52] The pursuer submitted that the court should be satisfied that each of these three matters had been proved which failing the court should grant decree in terms of crave 2. In other words crave 2 was not dependent on the court granting decree in terms of crave 1.

[53] I was invited to conclude that the copy letter was a validly executed document in accordance with section 4 of the Requirements of Writing (Scotland) Act 1995. The letter represented an informal codicil which clearly expressed the deceased's testamentary

intention. I was referred to the case of *Marley* v *Rawlings* [2015] AC 129 as a guide to how to interpret the terms of the letter.

[54] The succinct submission on this point was that the language used was clear and unambiguous and thus made clear that the deceased had intended that her will should be revised. The copy letter represented her testamentary intention. It was submitted that the signature immediately followed on from the "deed proper". As regards the latter expression reference was made to Professor Reid's commentary on section 7 of the 1995 Act. The signature appeared in its most natural place if the intention had been to give effect to what had gone before.

[55] It was submitted that the postscript following on from the signature could be said to be "other writing" as defined in section 12 of the 1995 Act. Accordingly the absence of a signature in respect of the postscript itself was immaterial.

[56] The last submission made in this connection was that the court should disregard the postscript since it did not appear to contain anything of relevance. Thus the court should treat the earlier part of the letter as representing the deceased's testamentary intention.

[57] Looking at the copy letter itself it was acknowledged that there was a distinction to be drawn between a document which represented a letter of instruction and one which was to be given testamentary effect. By way of example reference was made to the case of *Young's Trustees* v *Henderson* 1925 SC 749 and the passages cited.

[58] It was submitted that the lack of evidence to show that the letter was addressed to and sent to Campbell Smith was immaterial. In any event assuming that the letter had been sent to agents that would not render it ineffective as an informal codicil.

[59] Taking into account the language used in the letter and the extrinsic evidence the court should be satisfied that the document should be treated as an informal codicil. The

evidence relied upon came from the pursuer and Ms Raeburn. That evidence pointed both to the letter being correspondence addressed to Campbell Smith and the nature and reasons for the breakdown in the relationship between the deceased and the defender.

The defender

[60] As noted there was no dispute about the legal principles to be applied. Under reference to *W* v *W* it was emphasised that it was for the pursuer to address accurately and fully the circumstances which gave rise to the loss of the document.

[61] An instruction to a solicitor to draw up a will in particular terms is not the same thing as a will itself: *Young's Trustees*.

[62] Under reference to the Requirements of Writing (Scotland) Act 1995 it was submitted that section 4 required the court to be satisfied that the codicil was subscribed by the granter. A definition of subscription is provided in section 7. The codicil required to be signed at the end of the last page excluding any annexation. It would be necessary to look at the document as whole to decide whether any part of it can be characterised as an "annexation" within the meaning of the Act.

[63] Various criticisms were advanced of the evidence given by the pursuer and Ms Raeburn. In particular it was submitted in relation to the pursuer's evidence that there was little basis for her assertion that the paper is a copy of a letter sent to Campbell Smith. In respect of Ms Raeburn's evidence there was reason to doubt its reliability in relation to the visit to the deceased's in 2011 and the accuracy of the reporting of a conversation about what had happened between the deceased and Louise Murray on the doorstep.

[64] By contrast the court should accept the evidence of the defender and in particular her evidence which suggested that she had not received a substantial part of her inheritance while her mother was alive.

[65] Louise Murray gave an account which was at odds with the version of events spoken to by the pursuer. The court should accept Ms Murray's account.

[66] The terms of the deed had not been established and the court could not be satisfied of the complete terms of the document given the language used and missing second page.

[67] It was submitted that it was not open to the pursuer to seek to establish the tenor of the writing above the signature and ignore the writing below the line.

[68] The explanation for the loss was unconvincing. It would be open to the court to conclude that it had never been posted. It was not credible to suppose that the deceased would not have followed the matter up if she had heard nothing from her solicitors.

[69] In any event it was submitted that an examination of the terms of the letter strongly suggested that the letter was not one addressed to Campbell Smith.

[70] There was no direct evidence about the circumstances in which the letter came to be written or signed.

[71] If this was not a letter to Campbell Smith then there is no explanation for the loss at all either in the case pled on record or in the evidence.

[72] A letter of instruction to a solicitor can never be an informal codicil.

[73] The court should not make the order sought that the original document was subscribed by the deceased. There is no evidence about whether or not there is a signature at the end of the last page. The pursuer's position is that there may well have been a second page which she cannot produce.

[74] The lack of evidence about what is written below the apparent signature means that the court cannot assess the nature of that material even if the court were to accept the pursuer's argument that the material which follows the signature amounts only to an "annexation" within the meaning of the 1995 Act. Since the letter is incomplete the court is unable to perform the necessary textual analysis which would allow it to understand the intentions of the testator in adding to the letter the material which appears below her signature.

[75] Crave 2 should not be granted on its own. It would be a pointless order which would be likely to lead to further disputes between the parties.

[76] In summary it was submitted that there was insufficient evidence of the terms of any deed that the deceased intended to survive her and to express her testamentary intent. Accordingly decree should be refused.

Discussion and decision

An assessment of the evidence

[77] At least in certain respects neither the pursuer nor the defender was an impressive witness. The pursuer seemed wedded to the idea that the copy letter was intended to be sent to Campbell Smith WS notwithstanding its terms. At least by the time she came to give evidence in my view the pursuer cannot genuinely have believed that the letter was addressed to Campbell Smith. However even if I were wrong in that view and she had merely persuaded herself that she had made the correct assumption about the addressee that would be of no assistance in the proof of her case. When that assumption is tested against the terms of the letter it is clear, for reasons I will come to, that it was not intended for Campbell Smith.

[78] For her part the defender was unable or unwilling to explain the nature of the falling out with her mother and why they did not reconcile during her mother's lifetime at least in sufficient detail to make it comprehensible. Her evidence on this issue was not always easy to follow and in the end I considered that I could not rely on much of it. She offered little in the way of an explanation as to why she did not make more determined efforts to rebuild that relationship. Her evidence in relation to her anxiety about encountering her sister at her mother's may well have been true but in itself that anxiety could not provide a complete explanation of her lack of effort or interest in rebuilding the relationship.

[79] Whatever the reason for the breakdown of the relationship there was no dispute that the deceased and the defender had had no real relationship and no direct contact since 2006. Accordingly I have proceeded on that basis when considering the competing submissions.

[80] In their evidence the parties were agreed on one other important matter: that their late mother had been a meticulous person particularly in relation to matters of business.

[81] The pursuer submitted that the evidence of the pursuer and Ms Raeburn provided compelling evidence about why the deceased would have wanted to change her will.

[82] I accept that there was a rupture in the relationship between the defender and the deceased and that might well have been a spur to the deceased to consider changing her will whatever the reason for the breakdown in the relationship. I see no reason to doubt Ms Raeburn's recollection that the deceased was distressed about what she said had happened. However it is by no means clear whether, if it had been her intention to seek to change her will in 2009, that remained the position at the time of her death. Parties having agreed that their mother was a meticulous woman it is inconceivable that she would not have pursued the matter of the change to her will. Had she done so she would have made the position clear before she died. The obvious person to confide in about any change in her

will was the pursuer but she did not do so. She left no written document suggesting that her will had been altered to reflect what was said in the copy letter.

[83] For completeness I should add that, in my view, it is unnecessary to resolve all of the conflicts which the evidence threw up in order to reach a decision on the issues raised. Most of those conflicts had no material bearing on those issues.

[84] For example had it been necessary to do so I would have been inclined to accept the account given by Ms Murray about what transpired at the door but nothing turns on what happened on that occasion nor is any great insight to be gained by determining whether there was a "birthday incident" in 2006. For what it is worth I would been prepared to accept the evidence of the defender on this issue. The evidence from Ms Raeburn suggests that the deceased had had concerns about her relationship with the defender some of which related to paying off debts. I had no reason to doubt Ms Raeburn was doing her best to tell the truth as she recalled it but it is difficult to place any great weight on the detail of what had been said given the passage of time since the conversations in question. I would have accepted her evidence that the deceased was distressed about the breakdown in the relationship with the defender and her granddaughter.

[85] Against that background I turn to consider the copy letter which lies at the heart of the dispute.

The copy letter

[86] Putting aside for the moment the question of whether the letter should be characterised as a letter of instruction or an informal codicil there seem to be two obvious possibilities. One is that the principal letter was sent to a firm of solicitors and the other that the letter was never sent. The former seems less likely given what I have already noted

about the deceased's habits. In the end I have concluded that, on a balance of probabilities, the letter was never sent. It needs to be borne in mind that the copy letter is dated 2009 several years before her death. There was ample time for the matter to be formalised if the content of the letter truly reflected the deceased's settled wishes. The more compelling inference appears to me to be that the deceased changed her mind and did not want to act on what she had written. After all the last insight into the deceased's state of mind was as long ago as 2012 when she met Ms Raeburn. She did not die for more than decade after that. Even if it is assumed she was still upset with the defender at the time of her death that did not mean that she intended to change her will in the manner suggested in the copy letter.

[87] In the record the main contention is that the letter under consideration is a copy of a letter sent to Campbell Smith WS LLP. It is averred that the principal cannot be found and it is likely that the principal was "lost in transit or simply not received by Campbell Smith WS LLP for some other reason."

[88] I have no hesitation in rejecting the pursuer's submission that the letter was a copy of the principal sent to Campbell Smith. A brief consideration of its terms makes it obvious that the letter was never intended to be sent to that firm but to someone else. The first sentence makes that clear. It would have been superfluous to mention the name of the firm of solicitors had that firm been the addressee nor would the information contained in the first and second sentences have been included.

[89] In my view that would be sufficient to dismiss crave 1. It would have been open to the pursuer to plead the case on a different basis but she chose not to do so. That was the case the defender was asked to meet.

[90] Had it been necessary to consider this point on a wider basis (leaving aside the terms of the record) I would, in any event, have concluded that the pursuer had failed to prove the

matters set out in *W* v *W*. To succeed the pursuer has to prove three things: the execution of the document, its tenor and the *causus amissionis* (the circumstances of the loss). On the basis that the letter was addressed to someone other than Campbell Smith and on the assumption, contrary to the view which I have reached, that the principal letter was posted there is no evidence as to whom it was sent and of course no evidence of the circumstances of the loss. The pursuer is not able to satisfy that essential requirement.

[91] In terms of crave 2 the court is invited to grant decree that the copy letter is a validly executed document in accordance with section 4 of the Requirements of Writing (Scotland) Act 1995. It is clear from the terms of the crave itself that the making of such an order is predicated on the court being prepared to hold that the letter represents an "informal codicil" to the earlier will executed by the deceased. If that question is not decided in favour of the pursuer then there would be no basis on which to make the order sought.

[92] Considering the competing submissions on this issue I am satisfied that the arguments advanced by the defender are well founded. The language of the letter suggests that it is a formal document. It was not submitted that the letter might have been addressed to a professional person other than a solicitor. It seems to me that the most obvious conclusion is that the deceased drafted a letter to be sent to a solicitor other than Campbell Smith. The import of the letter itself is clear enough. It was drafted as a letter of instruction to make changes to her will. There is nothing in the letter which suggests it was designed to serve a second purpose. For example it contained no express instruction to destroy the earlier will.

[93] It is true that in *Young's Trustee's* that the court was prepared to accept the submission that a document can serve more than one purpose. As the Lord Justice Clerk

observed a document serving more than one purpose was "entirely feasible" but in practice a "most unusual arrangement."

[94] It is interesting to note in that case there was evidence led from the deceased's solicitor to the effect that he treated the document which had been submitted by the deceased as a draft. By contrast in the present case the pursuer chose not to lead any solicitor from Campbell Smith to say how they would have treated the letter of 2009 if it been received from the deceased.

[95] In any event as the decision in *Young's Trustee's* makes clear each case is fact sensitive. On the evidence in my view there is no basis on which to infer that the document was to be treated as an interim will. As Lord Ormidale said the question was whether the deceased in that case had intended the document "as a concluded expression of his settlement" or whether he meant it "only as a paper of instructions". It seems clear to me that it was the latter and there was no evidence to establish that the letter was to serve a dual purpose. Since I have decided that the copy letter does not represent an informal codicil that is a sufficient to refuse crave 2. That renders it unnecessary to decide whether the letter was "a validly executed document in accordance with section 4 of the Requirements of Writing (Scotland) Act 1995." Although it is unnecessary to express a concluded view on this issue I will consider the competing submissions advanced in respect of the 1995 Act.

[96] Having reflected on the points made I would have been prepared to accept the defender's argument that there is simply too much uncertainty inherent in the copy letter to construe it as the pursuer suggested in her submissions.

[97] I accept both from the pursuer's own evidence and the terms of the copy letter itself that there was at least one other page. As the defender submitted the court cannot speculate

as to what it may have contained. I do not consider that there is any evidence from which the court can reasonably infer what the content of a second page might have been.

[98] Section 7 of the 1995 Act, read short, provides that a traditional document is subscribed by the granter of it if it is signed by him at the end of the last page (excluding any annexation). The word "annexation" is defined in section 12 as including "any inventory, appendix, schedule, other writing, plan, drawing, photograph or other representation annexed to a document."

[99] As I have found that there was at least one missing page the test set out in section 7(1) cannot be met unless what is contained in the "ps" section can be regarded as an "annexation". In my view there is insufficient evidence on which to make such a determination.

[100] However if I were wrong in reaching that conclusion I would nevertheless have held that the part of the letter referred to cannot reasonably be described as an "annexation" as that word is defined in section 12 even allowing for the fact that the definition is not exhaustive. No doubt context is important but, generally speaking and as a matter of ordinary construction, a postscript would be part of any document not an "annexation" to it.

[101] Finally, even if I were wrong in my interpretation of the 1995 Act as regards the question of what amounts to an "annexation", I would have accepted the argument put forward by the defender at paragraph 7.5. of her written submission for the reasons set out in that paragraph.

[102] Accordingly I decline to make the orders sought by the pursuer. I will give parties 7 days to make submissions, if so advised, in respect of the question of expenses. If no submissions are made within that timescale I will award expenses in favour of the defender.