SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2026] SC GLA 57

GLW-A803-22

JUDGMENT OF SHERIFF A F DEUTSCH

in the cause

ALLAN SCOTT

Pursuer

against

(FIRST) LORNA REEVES, as purported executrix nominate of the late Linda Gettie, and as an individual; (SECOND) JACQUELINE SCOTT or ROBERTSON; (THIRD) LINDA SCOTT or GETTIE; (FOURTH) MICHAEL REEVES; (FIFTH) SCOTT REEVES; (SIXTH) BROOKE REEVES; and (SEVENTH) BRANDON REEVES

Defenders

Pursuer: MacLeod (counsel)
Defenders: Heaney (counsel)

GLASGOW, 24 December 2025

The sheriff having resumed consideration of the cause finds the following facts to be admitted or proved:

(1) The late Mrs Ruby Scott ("the deceased") died on 14 March 2021 aged 77.

(2) The death certificate issued in respect of the deceased records heart failure as the principal cause of death. It further records chronic obstructive pulmonary disease and vascular dementia as secondary causes of death. Production 6/4 is a copy of the death certificate.

(3) The deceased was diagnosed with vascular dementia in September 2018.

(4) The deceased was survived by five children, namely: the pursuer, the first defender, Jacqueline Robertson (the second defender), Linda Gettie (the third defender) and Robert Goldie. Walter Scott, the late husband of the deceased, died on 16 August 2015.

(5) From August 2015 until the date of her death, the deceased lived at 24 Skirska Street, Glasgow G23 5AL ("the property").

(6) In or around 2011, the deceased and her husband instructed Messrs McCarry's solicitors to prepare wills for them.

(7) The deceased subscribed a will dated 14 October 2011. Production 5/1 is a true copy of that will ("the original will").

(8) Under the original will the deceased provided that, in the event of her husband not surviving, her executor was to make over the property to the pursuer, Jacqueline Robertson (the second defender) and the first defender, equally among them.

(9) Production 5/2 is a true copy of a second will subscribed by the deceased ("the second will"). It bears to have been witnessed by Mary Watson and John McCabe.

(10) The second will consists of a two page printed *pro forma* or "DIY" document which has been completed in the handwriting of the first defender. The blank *pro forma* document was first published by GLSS Ltd trading as DIY legal forms in November 2019.

(11) The second will bears to have been signed on 25 April 2019. It could not have been attested any earlier than November 2019.

(12) The second will was not signed by the deceased during any period of Covid 19 lockdown restrictions.

(13) The second will was not prepared by a legally qualified person. The deceased did not receive legal advice prior to subscribing to the second will.

(14) On 21 February 2019 the deceased subscribed a power of attorney document conferring welfare and continuing powers in favour of the first defender. Production 6/8 is a true copy of the power of attorney. The power of attorney was framed by BJ Lannigan & Co Solicitors.

(15) Annexed to the power of attorney is a certificate given by the deceased's consultant psychiatrist to the effect that he was satisfied that the deceased understood the nature and effect of the power of attorney.

(16) On 28 April 2021 the first defender's then agents BJ Lanigan & Co, acting upon her instructions wrote to the pursuer's agents stating *inter-alia*:

> "The late Ruby Scott had executed a power of attorney shortly before executing the will. A report had been obtained from her consulting psychiatrist confirming that she had capacity. This was within weeks of her making the will a copy of which has been exhibited to you."

(17) On 29 September 2022 acting upon her instructions the first defender's agents stated that the date of subscription of the second will was 25 April 2020. That statement was untrue.

(18) Following the death of her husband the deceased came to require care and support from family members. Until late 2017 Jacqueline Robertson was the principal carer of the deceased. Following a dispute with the first defender Jacqueline Robertson withdrew from that role.

(19) From the early part of 2018 the first defender became the deceased's principal carer and manager of her finances.

(20) In 2019 a party was organized by the first defender to celebrate the deceased's 75th birthday. Neither the pursuer nor Jacqueline Robertson were invited. On her birthday the pursuer attended his mother's house along with his son, bringing flowers and a present

only to discover a party in full swing. The pursuer was made to feel uncomfortable at the party. He had previously suffered a heart attack and had been advised to avoid stress. Following the party his visits to his mother ceased. There was never any quarrel or argument between the pursuer and his mother.

(21) In the period from the beginning of 2018 until the death of the deceased the first defender was in a position of dominance over her both in relation to her finances and her physical and medical care.

(22) In the period after November 2019 the deceased was very physically frail, suffering from intermittent episodes of delirium, experiencing anxiety symptoms and displaying a significant degree of dementia.

Finds in fact and in law:

(1) At the time that the second will was subscribed by her the deceased was by reason of physical frailty, anxiety and dementia weak minded and facile such as to render her susceptible to influence and pressure.

(2) The second will was obtained from the deceased by the first defender through circumvention and undue influence for the first defender's own benefit.

Accordingly sustains the third and fourth pleas in law for the pursuer and repels the first, second, third, fourth and fifth pleas in law for the defenders;

Therefore orders production and reduction of the will of the deceased dated 25 April 2019 and thereafter appoints the parties to be heard in relation to the pursuer's crave for interdict and upon the matter of expenses on a date to be hereinafter assigned.

NOTE:

Introduction

[1] This action is a family dispute concerning the validity of a will granted by the pursuer's mother which effectively disinherits he and the second defender in favour of the first defender. The pursuer contends that the first defender procured the will through the operation of facility and circumvention and/or undue influence. Production and reduction of the will is craved as well as interdict to prevent the first defender from acting as executrix nominate under the contested will.

Procedural history

[2] The initial writ was warranted on 1 September 2022 at which time interim interdict was granted in respect of the first defender acting as executor. After becoming defended the action proceeded in accordance with the timetable provided for in the ordinary cause rules until 2 December 2022 when at a continued options hearing the action was sisted to allow the pursuer to make investigations into the disputed will; presumably to consult with a handwriting expert. The process shows the will having been borrowed for this purpose. On 6 June 2024 the sist was recalled on the motion of the first defender. On 10 October 2024 the court allowed the parties a proof before answer of their averments. The proof was assigned for 24 and 25 March 2025, however, that proof that diet was discharged on the pursuer's unopposed motion, with fresh dates being assigned for 3 and 4 April 2025. On 20 March 2025 the pursuer initiated amendment procedure which resulted in the rearranged proof diet being discharged and new dates being set for 1 and 2 September 2025. Until this point, the now first defender was the sole defender. The minute of amendment called an additional six defenders; two other of the pursuer's sisters and the children of the first

defender. All except the second defender lodged notices of intention to defend and answered the minute of amendment. The case called before me for proof on 1 September 2025. At the outset of the proof the third defender was permitted to withdraw her defences and of consent found to have no liability in expenses. I heard evidence over the course of 1 and 2 September 2025 and again at an adjourned diet on 11 November 2025. On the following day I heard counsel's submissions upon both the law and the evidence. Each had provided me with the text of their submissions which are to be found in process. At the conclusion of the hearing I made avizandum.

The applicable law

Facility and circumvention

[3] The concept of circumvention is conveniently explained by the Lord Glennie in *Smyth* v *Romanes's Executors* at para [49] in the following terms:

> "Circumvention is the name given to improper pressure applied to such a person by another in such circumstances. That pressure may, at one extreme, be direct, forceful and overpowering or, at the other, be more subtle or insidious, working by solicitation or importuning. Fraud is one example of the way in which a facile mind may be subverted but it is not an essential part of the principle. Bullying or browbeating may equally amount to circumvention. A robust individual will usually be able to resist pressure, or at least decide whether or not he wants to resist it. A facile person may not. But facility is a spectrum; it comes in degrees. A deed will only be at risk of being reduced (or set aside) if the pressure applied is unacceptable having regard to the extent to which the person on whom it is exerted is facile. If a person with a weak and pliable mind – whether that condition is permanent or temporary and whether caused by age, infirmity, pain, grief or something else altogether – is pushed or led by fraud, force or solicitation to do what he would, or might, otherwise have resisted doing had his mind been stronger, then his act can be reduced by the court."

[4] The condition of facility involves a state of mental weakness which can arise from a variety of different circumstances of which one example is old age (*Munro* v *Strain* (1874) 1R 824; *Horsburgh* v *Thomson's Trustees* 1912 SC 267). A person is said to be "facile" if his

or her mind is so weak or pliable that he or she is seriously likely to succumb to pressure applied by another (*Pascoe-Watson* v *Brock's Executor* 1998 SLT 40).

[5] To succeed with his plea of facility and circumvention the pursuer must establish three elements. Firstly, that the deceased was facile, secondly that she was pressurised to make the new will by circumvention and thirdly lesion, which simply means harm or loss. These elements are to be looked at together, not compartmentalised. The strength of the evidence in relation to one matter may compensate for the weakness of proof upon other matters. (*Mackay* v *Campbell* 1967 SC 53 at 61). In a case such as the present, there is no requirement for any separate proof of harm having been caused, the very fact that a new will was granted would be sufficient (*Pascoe-Watson* v Brock's *Executor* 1998 SLT 40 at 47; *Smyth* v *Romanes's Executors* 2014 CSOH 150).

[6] Where facility or weakness of mind is satisfactorily proven to have been present at the time when a person entered an obligation with or granted a deed in favour of the alleged perpetrator, then fraud or circumvention may be assumed without the need to prove any specific types of circumvention (*Mackay* v *Campbell* per Lord Guest at page 61). This principle will be readily applied in an action such as the present in which a testamentary writing is challenged because the interactions of the perpetrator with the mentally weak person are likely to be unknown.

Undue influence

[7] The essentials of the concept of undue influence were explained by Lord President Inglis in *Gray* v *Binney* (1879) 7R 332 at 342:

> "If… The relation of the parties is such as to beget mutual trust and confidence, each always to the other duty which has no place as between strangers. But if the trust and confidence, instead of being mutual, are all given on one side not

> reciprocated, the party trusted and confided in is bound, by the most obvious principles of fair dealing and honesty, not to abuse the power thus put into his hands."

[8] Independent advice is important because, if independent advice was not made available, undue influence will be inferred unless the defender can show that the position of the granter was as good as if he had received independent advice *Smyth* v *Romanes's Executors* at para [47].

[9] Once it has been proven that there existed a relationship in which one party had the dominant or ascendant influence, the pursuer must go on to prove that the party in the position of trust and influence has abused his position or the power that the position gives him (*Broadway* v *Clydesdale Bank plc (No 2)* 2003 SLT [26]). Using the position of trust and confidence for personal gain or to benefit someone connected to the perpetrator points to "abuse". As Lord McFadyen puts it in *Broadway* at para [28]:

> "If personal benefit can be demonstrated that will be one of the relevant circumstances to be taken into account in deciding whether the inference that undue influence was exerted should be drawn. In some cases (e.g. those in which a solicitor obtains personal benefit from the will prepared by him for this client) the element of personal benefit may be decisive."

Many of the same circumstances may point to the existence of both of the two grounds of challenge relied upon by the pursuer in the present case.

The evidence

[10] Prior to the proof the parties had entered into an extensive joint minute agreeing matters which inform many of my findings in fact. The pursuer gave evidence on his own behalf, also leading evidence from his son, two of his sisters Jacqueline Robertson and Linda Gettie, as well as from Dr Tom McEwan a consultant in old age psychiatry and Dr Meredith the deceased's registered GP.

[11] The first defender gave evidence on her own behalf. Her daughter Brooke Reeves also gave evidence as did Rebecca Mason, a former carer for the deceased. Of the two witnesses to the second will only John McCabe gave evidence in court. Affidavits from the other witness to that will Mary Watson were allowed by the court to form part of the first defender's proof.

The pursuer, Jacqueline Robertson and the pursuer's son

[12] I found all three of these witnesses to credible and reliable. Each gave evidence in a straightforward and measured fashion. Together they provided an account, which I accepted, of how their side of the family became disengaged from the deceased without there having been any actual falling out with her. Inevitably, because they were not privy to the first defender's interactions with Mrs Scott, these witnesses could not contribute evidence directly relating to the issues of circumvention and undue influence.

Dr Tom MacEwan

[13] From his review of the deceased's medical history Dr MacEwan had formed two conclusions about her mental state. Firstly, he found no strong medical or other evidence to suggest that around 25 April 2020 (the date on which the first defender asserts that the will was signed) the deceased lacked testamentary capacity. That is not in dispute. Secondly, he concluded that around this date Mrs Scott was physically and mentally frail and could be regarded as being a vulnerable person, in a loose medical/social sense. At the conclusion of his report the doctor qualifies his assessment:

> "To return to the concept of facility I find it helpful to refer to the opinion of Lord Glennie in *Smyth* v *Romanes's Executors* [ ] in which it is stated that *facility is a spectrum; it comes in degrees*. My opinion, already stated, is that Mrs Scott was

> vulnerable, in a medical/social sense. Mrs Scott was very physically frail, suffered from intermittent episodes of delirium, had anxiety symptoms and had a significant degree of dementia. She may therefore, have been facile, in terms of having *weak mind*, and consequently may have been susceptible to influence. How facile she may have been, with reference to the spectrum conceptualised in Lord Glennie's judgement, is very difficult to give an opinion on."

[14] Dr MacEwan did not have the opportunity of examining the deceased while she was in life. Important and what I consider to be reliable evidence as to where upon the spectrum of facility Mrs Scott stood at around the time the will was signed came from Linda Gettie to whose evidence I now turn.

Linda Gettie

[15] The first thing to notice in relation to this witness' evidence is that unlike her three siblings she has no skin in this game. She does not stand to benefit under either will and she seemed perfectly content with that circumstance. A second matter which it appeared to me enhanced the reliability of her evidence was the frequency of her visits to her mother following their reconciliation in early 2018; two or three times per week, even during weeks when Mrs Gettie was working and even during a period of time when her daughter was seriously ill and she was also caring for her. Mrs Gettie herself works as a home carer, a circumstance which I considered lent weight to her opinions about her mother's mental and physical condition. I found her to be a credible and reliable witness and particularly so about the weakness of the deceased's mind and poor health as well as about the dominance which the first defender had over her mother during the period from 2018 until Mrs Scott's death.

[16] Prior to visiting her mother in early 2018 Linda Gettie had been estranged from Mrs Scott for many years. She felt that she had been treated differently from her siblings;

cast in the role of black sheep of the family. Initially her motive for going to see her mother had been to question her about these matters. Upon meeting her mother and realising the extent of her dementia she abandoned her original intention because she said that given her mother's condition it would have been cruel to question her. I took this as a clear indication that in this witness' view Mrs Scott was already far along the spectrum of facility. The witness spoke of her mother being a very private person, going on later in her evidence to describe her as being "in a little world of her own." She also said her mother suffered from low mood "going up and down," which Mrs Gettie attributed to her living alone. Some days her mother became very confused; numerous examples of this were provided and which from their description appear to have amounted to episodes of delirium. In cross-examination the witness stated that by April 2020 her mother did not have any good days and was always confused, such that there was never a time when it was possible to have a proper conversation.

[17] Mrs Gettie gave various examples of behaviours pointing to an increasing weakness of mind in her mother such as being unable to keep her own bingo score without help and being unable to understand the cause of the Covid lockdowns. Asked about the effect of CPOD on Mrs Scott the witness described her mother as hardly being "able to walk the length of herself." She said that over time her mother's health had become worse and that that she had deteriorated rapidly.

[18] The evidence of the witness strongly supported the conclusion that in the period from the beginning of 2018 until the death of the deceased the first defender was in a position of dominance over her both in relation to her finances and her physical and medical care. Although the witness herself undertook an active role in her mother's care, it was clear from her account that the first defender was very much in charge.

[19] There was in Mrs Gettie's account, evidence which tended to show that the first defender exerted pressure and influence on her mother in ways directed against her other siblings. Most egregiously that she threatened to leave off caring for her mother and stated that the consequence of this would be that the deceased would be "flung" into hospital by the pursuer and Jacqueline. More subtly the first defender saw to it that celebration cards were no longer sent and that, after a redecoration, the only photographs displayed in the deceased's home were those of the first defender's own family. It was clear from Mrs Gettie's evidence that it was the first defender who saw to it that neither the pursuer nor Jacqueline be invited to their mother's 75th birthday celebration and that she was responsible for the pursuer being made to feel uncomfortable when he attended on that occasion.

[20] According to this witness the first defender articulated the view that the pursuer and Jacqueline were just after their mother's money and that they were not interested in her care. Such a perspective might be thought likely to underpin any decision to procure that the terms of the original will be varied.

[21] Although much of Mrs Gettie's evidence tended to be adverse to the first defender's position she gave no sense of any antipathy towards her sister. I considered that her evidence gave all due credit to the first defender for the efforts she made on her mother's behalf. It could perhaps be argued that some of this witness' evidence was supportive of the notion that her mother might have wished to exclude the pursuer and Jacqueline from inheriting. She spoke of her mother being upset by their absence, however, when, in the course of examination-in-chief, she was asked if her mother had ever spoken to her about changing will, her answer was that she had not.

The first defender - Lorna Reeves

[22] One single fact more than any other serves to compromise the first defender's evidence; the incorrect dating of the second will. It is a very common experience in the first few weeks of a new year to find oneself dating documents with the year just passed. By April, when coming to provide a date, insertion of the correct year will for most people have become automatic. That the first defender simply made a mistake when she wrongly dated her mother's will is improbable. The explanation which she offered in examination in chief that the mistake happened because at the time there was so much talk about "Covid 19" did not ring true. Still less convincing was the explanation which she offered in cross-examination; that she was hopeless at writing dates. As a carer the first defender would be required to make notes of her visits which would necessarily be dated. There are good reasons to suppose that the choice of date was deliberate.

[23] At the time that the second will came to be signed the first defender was well aware that any onerous legal document which her mother signed was likely to be subject to challenge unless there existed contemporaneous medical advice from a suitably qualified person about her mental state. The first defender's production 6/7 of process comprises copies of the deceased's medical records maintained by her GP practice. On 4 December 2018 Dr DM Byford made the following record of a telephone conversation with the first defender in the following terms:

> "Phone call to Lorna, daughter re the POA [power of attorney] situation. I explained that she would need to approach her psychiatrist for a formal capacity assessment for POA given that she now has a diagnosis of dementia. I explained that this diagnosis would be enough to cast doubt on the GP assessing capacity for what is a legal document, and the other family members might challenge and question a GP's decision in any future dispute over her mother's estate."

If her mother had, as the document itself records, signed the second will in April 2019 then the first defender would have been able to demonstrate her mother's capacity by reference to the doctor's certificate obtained in connection with the power of attorney.

[24] The first defender now asserts that the second will was subscribed on 25 April 2020. It is not in dispute that at this juncture the coronavirus pandemic had become a national emergency with the first lockdown having been announced on 24 March 2020 and advice given on social distancing and shielding for the elderly and most vulnerable. The first defender's account of how, against this difficult background, the second will came to be signed by her particularly vulnerable mother and witnessed by two other elderly people, was wholly unconvincing.

[25] As will be seen, I attach little weight to the evidence contained in the two affidavits of Mary Wilson. There is, however, one piece of evidence in relation to Mary Wilson which I do accept. The postings which she placed on Facebook at 5/21, 5/23 and 5/24 show her to have been a person who took lockdown and the social distancing rules with the utmost seriousness. It would have been entirely inconsistent with the attitudes expressed in the various posts for her to have attended at the deceased's house on 25 April 2020.

[26] I do not doubt that, notwithstanding the evidence of her frustrations with her mother and the burden of being her principal carer, the first defender was greatly concerned about her mother's welfare. Moreover, it was her evidence that she had warned her mother of the risks of contracting the virus and there was evidence that her mother was frightened by the prospect of contracting Covid. It is therefore inconceivable that the first defender would have exposed her mother to the possibility of infection from the two witnesses to the second will. The evidence about her arranging to have the deceased's house fogged with

disinfectant seemed unlikely to be true. There was no evidence that at the time such measures were thought to be effective and no independent evidence that they occurred.

[27] The first defender's evidence about having formed a "bubble" along with the two witnesses was unconvincing. The notion of extended households or bubbles was not current in April 2020. The evidence, particularly that of John McCabe, did not suggest that the extended household identified by the first defender existed in reality. Mr McCabe's evidence in cross-examination suggested that his visits to the deceased's house were infrequent.

[28] The choice of April 2020 as the date of signature did present the first defender with a means of explaining why her mother granted the second will without the benefit of legal advice. Her position was that the lockdown had made it impossible to consult a lawyer. There was no evidence before the court about restrictions applying to lawyers. Whatever difficulties there may have been, I consider it likely that these could have been surmounted. In any event I have concluded that whenever, in the period after November 2019, it was that the second will was signed, this did not occur during any period of lockdown.

[29] From the first defender's evidence it appeared that her mother had been speaking about changing her will from 2018 onwards and that she had regularly asked the first defender to facilitate that. This fits neither with Linda Gettie's evidence that she never heard her mother mention changing her will nor with the fact that the deceased consulted with solicitors in April 2019 in regard to the preparation of a power of attorney. If the deceased had wanted to change her will then that would have been the obvious time to address the matter. Both during examination in chief and cross-examination the first defender represented herself as having acted to restrain her mother. She had not wanted her mother to do anything rash. The fallout had been recent and she did not want her

mother to change her will and then regret it. At the time that she had granted the power of attorney the deceased had wanted to change her will but the first defender had told her to leave it because she had not wanted her mother to rush into anything.

[30] What emerges most clearly from the first defender's evidence about her mother's desire to change her will is that if/when the will was to be changed, at least as she saw it and probably also in fact, this was a matter which was to be determined by the first defender. It is a small step to think that the content of any new will would similarly be a matter to be decided by the first defender.

[31] It was first defender's evidence that the deceased had spoken of changing her will for at least a couple of years before the second will was granted. It was surprising therefore how little evidence she was able to give about her mother's motivation. Annoyance at Jacqueline having claimed carer's allowance was one explanation offered. Even if that had been the case, it is not obvious why that resentment should have extended to the pursuer. The only other explanation offered was that her mother did not want Alan and Jacqueline to get anything because they had already had enough from her. Invited to say what her mother had meant by this, the first defender only added that she had given them plenty of money and she was peeved at the way that they had acted. The only evidence of the pursuer had received anything from his mother was about a gift made to him following his father's death.

[32] I found the first defender's account of events occurring on the day that the second will came to be signed (whenever that was) to be incredible. Notwithstanding her position on record the pro forma will was not procured by her but was provided by Mary Watson. The evidence was that Mary Watson and the other witness John McCabe happened to visit the deceased bringing with them the blank document and that the first defender's daughter

Brooke, who happened to be in the house at the time, summoned her home. The witness claimed that she had never seen the will prior to this day but nonetheless she proceeded to explain the will to her mother, to take instructions and to complete the will and have it witnessed. If, as she claimed, she was unconcerned about whether a new will was granted, "eachy peachy" as she put it, then why rush at the matter? In this account the initiative is presented as having rested with Mary Watson. I did not believe this evidence. It was not Mary Watson who completed the will in such a way as to benefit herself and her family.

[33] The combative manner with which she delivered her evidence did little to enhance first defender's standing as a witness. Her replies to questions frequently developed into lengthy statements aimed at promoting the position which she wished the court to accept.

John McCabe

[34] Mr McCabe had such a poor recollection of the events surrounding his having witnessed the deceased's will such that it tempted the speculation that he had not been present at all when the second will was signed and his signature had been added at some later time. That would fit with the odd circumstance that Mary Watson took the will away after the deceased signed it. While this witness' evidence was of little assistance to the court, his account did suggest that he and Mary Watson were much less frequent visitors to Mrs Scott's house than was indicated by the first defender and her daughter. At one point in his evidence the witness stated that on the day the will was signed the deceased was going to her "wee club," which tends to suggest the signing did not occur during lockdown.

Mary Watson

[35] This lady did not give evidence in court. At the outset of the proof the court was presented with a letter from her GP written in soul and conscience confirming that she was not fit to attend court. Two affidavits sworn by the witness, framed by the defender's solicitors dated respectively 22 November 2022 and 29 August 2025 were produced and I admitted them as evidence in terms of ordinary cause rule 29.3. In general both affidavits are supportive of the first defender's position. I attach little weight to the affidavits. The evidence which they contain was not tested in cross-examination and moreover in certain important respects the two affidavits are contradictory of each other and of other evidence. The earlier affidavit is very brief. At paragraph 3 it indicates that the first defender had possession of the will prior to the occasion of it being signed. The fourth paragraph mirrors the first defender's account. "The full document was filled in by Lorna while we were all there. Lorna read it all out to her. Ruby confirmed it properly recorded her wishes." The second affidavit records Ruby as having read the will herself; of actually having read it out loud. The second affidavit seems aimed not at recording a recollection of what took place but rather at supporting the first defender's position at the upcoming proof.

Brooke Reeves

[36] The first defender's daughter was 16 at the time the second will was signed on which occasion she is said to have been present. She is now 21. Her evidence seemed to me to have been scripted with a view to assisting her mother's position. Her evidence was that her grandmother had said that she did not want Jacqueline or Alan to receive anything after what they had done to her. Asked if the occasion of signing the will was the first time she had heard this she responded that the deceased had previously expressed this view to her

quite a few times. It seemed to me unlikely that this was the sort of conversation that the deceased would have had with a 16-year-old.

[37] In cross-examination the witness faltered. Whereas her evidence had previously been that her mother had hired a fogging machine from a cousin and had carried out the operation herself, her evidence now appeared to be that it was the cousin who did the fogging. Her evidence as to who inhabited the bubble to which they belonged also changed to include John McCabe and Mary Watson. Her initial evidence had been that she only discovered the terms of the 2011 will on the day of her grandmother's death, however, she seemed to depart from that position in the context of her volunteering that her grandmother had not trusted Linda Gettie. Perhaps it had not gone unnoticed that her aunt's evidence had not exactly been favourable to the first defender's position. At the outset of cross-examination Ms Brooke had been asked if she had ever discussed her evidence with anyone. She replied that she had not. I came to doubt the truth of that assertion. It did not enhance any sense of her reliability as a witness that Ms Brooke was so uncertain about when the will had been signed; possibly spring or possibly summer.

Rebecca Mason

[38] This lady was at times involved in the personal care of the deceased. She attended with Mrs Scott on a few occasions during lockdown. It is unclear which of the first defender's averments this witness' evidence was intended to support. Her limited interactions with the deceased are a poor guide to the extent of the latter's facility; certainly not as compared to Linda Gettie.

Dr Meredith

[39] The deceased's registered GP spoke to the medical notes of the practice which run to 474 pages. He had little or no direct involvement with the deceased's care but was able to provide some useful explanations as to the shorthand used in certain of the entries.

Discussion

[40] The medical records of the deceased as digested and explained by Dr MacEwan amply demonstrate that by 2020 the deceased was vulnerable in both a medical and social sense. She was very physically frail, suffered from intermittent episodes of delirium, experienced anxiety symptoms and had a significant degree of dementia. That evidence taken with the direct experience of Linda Gettie has led me to conclude that whenever in the course of 2020 the deceased signed the second will she was indeed facile in the sense of having a weak mind and in consequence of that was susceptible to influence. In the present case there is no requirement for proof of lesion; the very fact that a new will was granted is sufficient evidence of harm. It is noteworthy that there was no independent evidence that the deceased changed her mind in regard to the testamentary intention expressed in the original will.

[41] Weakness of mind having been satisfactorily proven, the fact that under the new will the first defender was the major beneficiary, without further proof warrants the inference that she procured it through circumvention. The manner in which the document was created, without benefit of legal advice and through the use of a pro forma completed in manuscript by the first defender herself, supports that inference. So also does the evidence concerning the position of dominance held by first defender over the deceased both in relation to her finances and her physical and medical care. The evidence of Mrs Gettie

described at para [19] above tending to show a capacity for abuse of that position of dominance is also telling. What I have found to be the deliberate misdating of the second will, making it appear contemporaneous with the certificate given by the deceased's consultant psychiatrist, clearly points to an understanding on the part of the first defender that something irregular had taken place when her mother signed that later will.

[42] I turn now to the issue of whether the new will was the result of undue influence. Upon this issue I consider three matters to be determinative. I have found it to be proven that the first defender was in a position of dominance over the deceased. She was the principal beneficiary under the new will. Independent legal advice was not made available to the deceased, as in the circumstances it ought to have been. The existence of Covid restrictions represents a flimsy excuse for that. In any event I disbelieved the evidence that the second will was signed during a period of lockdown. The first defender's dominant position, the benefit which she would receive under the second will and the absence of independent legal advice taken together raise the inescapable inference that she exerted undue influence upon the deceased.

Decision

[43] In light of the foregoing conclusions in regard to facility and circumvention and undue influence I have sustained the third and fourth pleas in law for the pursuer, have repelled the first, second, third, fourth and fifth pleas in law for the defenders; and have ordered production and reduction of the will of the deceased dated 25 April 2019. While in his submissions Mr McLeod did invite the court to grant permanent interdict he did not expand upon why this remained necessary. The first defender can no longer rely upon the second will and I would find it surprising if she would seek to act further as her mother's

executor. I have appointed that issue to be addressed at a further hearing along with the matter of expenses.