Where there is a will there is a wrong way

The Supreme Court of England handed down its decision in Marley v Rawlings on 22 January 2014. The court was required to consider the question as to whether a Will could be rectified in circumstances where mirror Wills were made by a husband and wife and there was a mistake at the time of signing the Wills. The husband and wife signed each others Will.

The facts

On 17 May 1999 Mr and Mrs Rawlings were visited by their solicitor to enable them to execute their Wills which the solicitor had drafted based on their instructions. The documents were short and except for the differences in the documents that were required to identify Mr and Mrs Rawlings, the Wills were identical in nature (known as “mirror wills”). The assets of each of their respective estates where left to the survivor of Mr and Mrs Rawlings and then on the death of the last of Mr and Mrs Rawlings, the whole of their estate was left to Terry Marley.

By an oversight, the solicitor gave Mr and Mrs Rawlings the others draft Will and no body noticed. Mr Rawlings signed the Will intended for Mrs Rawlings and Mrs Rawlings signed the Will intended for Mr Rawlings. The documents were witnessed and then placed into the solicitor’s safe custody. Mrs Rawlings died and her estate was administered. The mix up was not detected when Mrs Rawlings estate was being administered. However, after the death of Mr Rawlings, Mr Rawlings children challenged the validity of his Will on the basis that Mr Rawlings had not signed his Will – rather it had been signed by Mrs Rawlings. Mr Rawling’s will conferred the whole of the estate to Terry Marley. If Mr Rawlings’ children were successful with their challenge, it would have resulted in Terry Marley’s benefit being extinguished and Mr Rawlings’ estate would have passed on an intestacy to his children.
Knowledge and approval of the Will

One of the historical requirements to make a valid Will is that a will maker must know and approve of the contents of the Will which was actually executed. Of course if the wrong Will has been executed then it is arguable that the will maker did not know and approve the contents of the Will therefore causing the Will to be invalid. In Queensland, attempts have been made in the past by courts to correct a clerical error of this nature, however the courts have previously held that such an error is not capable of rectification.

The Supreme Court of England in Marley v Rawlings held that whilst the document did not satisfy the formality requirements, nevertheless Mr and Mrs Rawlings intention was to sign their own Will and not each others Will and ordered that the defect be rectified. The court held that the execution of the documents could be regarded as a clerical error and was capable of rectification.

Conclusion

The court found that the will maker’s intention combined with the solicitor’s mistake was clear and there was no reason why the Wills could not be rectified.

The case is of particular interest to estate practitioners as whilst the court’s decision is not binding in Australia, the case may prove to be persuasive in Australian courts when a similar issue arises in the future.

If you would like to discuss your estate planning, please contact us to make an appointment with experienced Wills & Estates specialist Jarrad Mobbs.

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