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1. [Edwards v Edwards \[2007\] EWHC 1119 \(Ch\)](#)

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Edwards v Edwards [2007] EWHC 1119 (Ch)

CHANCERY DIVISION

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Lewison J

Date: 3 May 2007

03/05/2007

Mr Justice Lewison:

1. Mrs Winifred Victoria Edwards (known as “Vicky”) died on Christmas Day 2001. She had three sons, one of whom, Reggie, predeceased her. Her two surviving sons, John and Terry, are the protagonists in this dispute. The principal family members will, I hope, forgive me if I call them by their given names, since they all share a surname. By her will made on 10 October 2001 Mrs Edwards left the whole of her net estate to Terry. She left nothing to John. It is accepted that Mrs Edwards had testamentary capacity; and that she knew and approved the contents of her will. She had, however, made an earlier will in 1990. Under that will she left her estate to her husband Roy; but if he predeceased her (as he did) then she left a legacy of £5,000 to her only grandson Lee, who is John's son; and the residue of her estate to her three sons in equal shares. What caused the substantial difference between the two wills? John says that his mother changed her will because of undue influence exerted upon her by Terry; and by lies which he told his mother about John and his wife.

2. It is common ground that the burden of proving these allegations rests on John; and, given their seriousness, that although the standard of proof is the balance of probabilities, they must be proved by compelling evidence. I heard a large number of witnesses who broadly fell into two camps, those who supported John and Carol and those who supported Terry. I say “supported” advisedly, because this sad family dispute has I think coloured the evidence of many of the witnesses. I also heard from some witnesses who I considered to be wholly impartial and reliable, notably WPC Atyeo and Dr Carne. I had the benefit of contemporaneous notes made while Mrs Edwards was

in hospital, which I also found of great benefit. I did not hear evidence from Terry. He produced a medical certificate from Dr Carne, which said that he was unfit to give evidence. As Dr Carne said in his evidence, he was being cautious when he gave the certificate and he could not discount that Terry was exaggerating his symptoms. It is a familiar tale of a potential witness suffering from stress at the thought of giving evidence. But it inevitably means that I can attribute less weight to Terry's evidence than I might have done if he had come to give evidence in person. Nor did Terry make a supplemental statement in answer to the allegations made against him. This too tells against accepting his evidence at face value. I should record that the Second Defendant, Mrs Betty Coombes, although called as a witness, played no active part in the litigation. She was joined because she was named in both wills as one of Mrs Edwards' personal representatives, but she has said that she will renounce probate. Ms Lucy Leader appeared on behalf of the Third Defendants, but withdrew when it became clear that neither Mr Pryor nor Mr Arentsen, appearing for the Claimant and First Defendant respectively, wished to ask questions of her only witness, Mr Roberts.

3. Mrs Edwards lived at 20 The Avenue, Tonyrefail in the Rhondda Valley. She had moved there with her husband Roy and their three sons some fifty years ago. John married Carol in 1973. In the early years of their marriage they lived in the family home; but they soon moved to 62 St John's Road, Tonyrefail, about a mile away. It was too far for them to walk to 20 The Avenue at the time of the events with which I am concerned. Since John does not drive, but Carol does, John did not visit his mother except with Carol. Their son Lee was born in 1974. He was Mrs Edwards' only grandchild. He is the first member of the family to have gone to university; and Mrs Edwards was very proud of him. Reggie and Terry continued to live with their parents. Roy was a miner and he died in 1994. His claim for compensation against British Coal is one of the two main assets of his widow's estate, the other being the family home.

4. Reggie and Terry did not get on well. Indeed I was

told that they barely spoke to each other. But both used to drink at the Red Cow, a pub at the end of the road. Terry in particular was a heavy drinker and would often arrive home in the small hours, drunk. The unchallenged evidence of Mrs Jean John was that Mrs Edwards was nervous of Terry and started suffering from panic attacks. She was most nervous of Terry when he came back from the pub.

5. Until the last eighteen months or so of her life Mrs Edwards appears to have been in reasonable health. However, her mobility was impaired. In June 2000 she was given a tripod and Zimmer frame to help her to walk. Even so, she found walking difficult; and in August of that year an occupational therapist made a number of recommendations for changes to her home which would have made it easier for her; and noted the family's request for a wheelchair. None of them were implemented. The evidence of Mrs Betty Coombes and of Mr David Morris, both of whom suggested that she continued to take the bus to go shopping until the last few months of her life, was thus inaccurate and exaggerated. In the autumn of 2000 she had a fall, which resulted in her admission to hospital. She spent about two weeks there. While she was in hospital she was visited by John, Carol, Lee and Reggie, but not by Terry. After her discharge, John and Carol would go to her house every day. They did her shopping; and Carol did her washing. Carol cooked a meal for the whole family every Sunday. Mrs Coombes suggested that John and Carol did little more than the shopping for Mrs Edwards. Again, I consider that her evidence was inaccurate and exaggerated. Such independent contemporaneous documentary evidence as there is all points to the conclusion that Carol in particular was Mrs Edwards' mainstay. The report of the occupational therapist in August 2000 said that "a supportive daughter in law, Carol, visits almost daily when her own health and domestic circumstances allow". A social assessment made before Reggie's death in August 2001 (but otherwise undated) also refers to a "very supportive" daughter in law. Dr Carne who was Mrs Edwards' GP said that until the last few months of Mrs Edwards' life John and Carol would "always" be there on his frequent visits to Mrs Edwards at home. Terry would "sometimes" be there. Terry's attempt to suggest the contrary in his witness statement was also wrong.

6. In November 2000, a cheque for over £11,000 arrived. It was an interim payment for Roy's claim for compensation. The cheque was given to Carol to pay into Mrs Edwards' account, which she did. That brought the credit balance to just over £15,500. A few days later

at Mrs Edwards' request Carol went to the bank and withdrew £2,000 from Mrs Edwards' account. She had been given some form of written authority by Mrs Edwards, and the authenticity of the authority was verified by the bank. In December 2000, again at Mrs Edwards' request, Carol drew a further £3,000 out of her mother-in-law's account. That Christmas Mrs Edwards gave £1,000 to each of John, Carol, Lee and Reggie (making £4,000 in all). There is no evidence about the fate of the remaining £1,000 and, in particular, Terry does not say that it was given to him. John and Carol positively say that he was not given anything, because of the distress that his drinking was causing his mother. In January 2001 Mrs Edwards gave £2,000 to John as a "thank you" for work which John had arranged to have carried out at 20 The Avenue. This did not involve a further withdrawal from the bank.

7. At about this time in January or February 2001 Terry would frequently arrive home drunk. His mother would telephone John or Carol, often in the small hours of the morning. At one stage Mrs Edwards asked Terry to leave the house; and Terry did leave for about a week. When he left he went to stay with a friend of his, David Morris. Mr Morris had been a lodger with the family for some years, but over thirty five years ago. He had since made a life for himself in Leicester, before returning to Tonyrefail, where he bought a house at 92 The High Street, just at the end of The Avenue.

8. Also in January 2001 Mrs Edwards added Carol as a signatory on her bank account. In March 2001 Mrs Edwards was again admitted to hospital in Llantrisant. Again she spent about two weeks there, and was discharged on 26 March. Almost immediately afterwards she spent two weeks in the Gelli Seren nursing home, in Tonyrefail. Carol withdrew £2,000 from Mrs Edwards' bank account. Part of this (amounting to some £300) was used to pay nursing home bills. John says that the "change" was given to his mother. This is indirectly corroborated by Terry, who says that his mother had at least £900 in cash in the house.

9. In May 2001 John and Carol took Mrs Edwards to Devon on holiday. She had some money of her own with her; but John and Carol paid for the holiday out of the Christmas money that they had been given. They came back in time for Reggie's birthday on 25 May 2001, because Mrs Edwards wanted to give him a present. In the following month John and Carol took Mrs Edwards on another holiday to Devon for another week. This time John and Carol paid.

10. Terry says that in July 2001 Reggie opened a bank statement relating to their mother's account. Terry says that Reggie saw that the balance was only £7,811 when he and Mrs Edwards expected it to be about £15,000. He says that Reggie had a discussion with Mrs Edwards who could not account for the missing money. He and Reggie thought that Carol must have taken it. I must make it clear that Mr Arentsen, counsel for Terry, did not suggest that Carol had actually taken any money, so that if the suspicion existed, it was ill founded. Terry's evidence was corroborated by Mrs Elaine Edwards, who was a neighbour and friend. She said that Reggie had told her that he had found a bank statement and that Carol and John had taken money out of Mrs Edwards' account. She said that on a later occasion either Reggie or Mrs Edwards told her that John and Carol had said that the money had been used to pay for double glazing at 20 The Avenue; but that they did not believe that because the double glazing had been paid for years previously. For reasons I will explain later, I do not accept this evidence.

11. Reggie died suddenly on 13 August 2001. He was about 70 years old. It was his brother Terry who found the body. Everyone agrees that after Reggie's death Mrs Edwards was never the same.

12. When he died Reggie had a wallet that contained a large amount of cash. What happened to this wallet is a potentially important issue in the case. Terry says that he found the wallet on the floor of Reggie's bedroom and took it into his own bedroom where he put it into a drawer "for safekeeping". He says that he did this because he had suspicions, originally raised by Reggie himself, that Carol had been surreptitiously taking money out of Mrs Edwards' bank account. John says that his mother asked him to find Reggie's wallet. He looked for the wallet in Reggie's bedroom but could not find it. While coming back across the landing he went on impulse into Terry's room. He could not explain why he did that. However, he looked inside Terry's bedroom and found the wallet there. He says that he gave the wallet to his mother and that she put it into her handbag. I accept John's evidence, and I reject Terry's evidence that there were any suspicions about Carol before Reggie's death. Terry meanwhile was out. He came home drunk; and said that now that Reggie was dead everything in the house belonged to him. Carol told him that he was despicable for having taken Reggie's wallet while Reggie's body was still in his bedroom. There was a row. Mrs Edwards was upset and decided to go home with John and Carol. Mrs Jean John recalled that when Mrs Edwards said that she wanted to go home with

John and Carol, "Terry flew off the handle and completely freaked out refusing to allow his mother to leave." Given that Mrs Edwards' favourite son had just died, that must have been both frightening and distressing. Mrs John's evidence was not challenged. Mrs Edwards did in fact leave with John and Carol.

13. On the following day, 14 August 2001, WPC Colleen Atyeo and a colleague went to the family home. They were called because of Reggie's sudden death. In addition Terry had put a wooden chiming clock out into the rain. The clock had been a present from John to his mother; and Terry put it out in the rain to get back at John. This seems to have been motivated by pure vindictiveness. John and Carol were alerted to this by Kathleen Williams, who lived next door and who was also Mrs Edwards' sister-in-law. The police officers helped in getting the clock back. But while they were there they were told by Carol (who did most of the talking) that she or John had found Reggie's wallet in Terry's bedroom and that they had taken it for safekeeping. Terry was very upset that the wallet had been taken from his bedroom and made this clear to the police officers. Carol's evidence, which was not challenged in this respect, was that David Morris had come to see Mrs Edwards that day at John and Carol's house. He was not interested in how she was feeling or coping, but wanted to know where the deeds to the house were and whether Mrs Edwards had made a will, and if so where it was.

14. While she was staying with John and Carol, Mrs Edwards had a fall. She was in pain; and was admitted to hospital on 16 August 2001. On the following day, 17 August, Carol drafted a letter for Mrs Edwards to sign. The letter gave permission for John and Carol to enter the house. It continued:

"I also request that my son Terrence Edwards of 20 The Avenue is removed from this property after the funeral or next day and for my son John Edwards to change the locks."

15. The letter went on to say that there was a cow and calf ornament of sentimental value on the mantelpiece and that she had left some money in a black purse. It said that Reggie had money in a box and continued:

"John found Reggie's wallet for me in Terry's bedroom on Monday."

16. On the reverse of the letter was a list of a few things

that Mrs Edwards wanted found. They included the cow and calf ornament, some plates that had belonged to Reggie, pearls and a lottery ticket. The letter was signed by Mrs Edwards and witnessed by a nurse. Despite this Mr Morris forcefully alleged in the course of his oral evidence that Mrs Edwards' signature had been forged by Carol; and Mrs Elaine Edwards also questioned its authenticity. This evidence to my mind betrayed a partisan attitude by both of them.

17. On the same day the hospital recorded a message from Mr Tolliday, Mrs Edwards' social worker. He said that Terry could be very verbally aggressive and that he had in the past tried to take Mrs Edwards out of hospital and out of Gelli Seren nursing home. Terry had not been physically abusive but could be verbally. Mr Tolliday said that he was not to see Mrs Edwards. I regard this as very significant. The advice of the social worker, who would have been impartial and who would have had Mrs Edwards' own interests at heart positively recommended that her son Terry was not to visit her. That recommendation can only be explained if Mrs Edwards was in fear of or distressed by Terry. This explanation is corroborated by Mrs Jean John. She said that she remembered Mrs Edwards hiding from Terry when he came home drunk; and she recalled another occasion when Reggie had told her that he had found his mother hiding in an alleyway. Mrs Kathleen Williams, who did not give evidence, but whose statement I read, also said that Terry would be verbally abusive to his mother.

18. On the following day, 18 August, WPC Atyeo saw Carol after Carol had again called the police. Carol told WPC Atyeo that there had been a history of drinking and abuse between Terry and Mrs Edwards. She gave that as the reason for having taken the wallet out of the house. She also told WPC Atyeo that she was concerned that money had been withdrawn from Mrs Edwards' bank account while she (Carol) was on holiday. Carol showed her the letter that Mrs Edwards had signed on the previous day; and WPC Atyeo went to see Mrs Edwards in hospital. Her account of her visit was not challenged. Mrs Edwards told her that she did not want to go back to the property; and that she no longer wanted Terry to live there. She asked WPC Atyeo to tell Terry of her wishes. By this time Terry had himself been admitted as an in-patient at the same hospital; and WPC Atyeo called on him too. Again her account of her visit was not challenged. According to her, Terry was of the opinion that the property belonged to him following Reggie's death. This was the same view that he had expressed on the day of Reggie's death

itself. She explained that this was not the case and that the property belonged to his mother. She said that the property would only change hands on Mrs Edwards' request and that Terry might wish to seek legal advice. She showed him the letter that Mrs Edwards had signed. Terry does not refer to the letter in his witness statement at all, or to his meeting with WPC Atyeo.

19. I have no doubt that the contents of the letter reflected Mrs Edwards' wishes at the time that it was written. When Mrs Elaine Edwards was told about it at the time, the fact that Mrs Edwards wanted Terry out of the house did not come as a surprise. All the witnesses agreed that Terry's drinking caused considerable distress to Mrs Edwards. While Reggie was alive she had him to depend on. But in the immediate aftermath of his death I believe that Mrs Edwards did not wish to live alone with Terry. The letter, signed by Mrs Edwards, also corroborates John's account of the finding of Reggie's wallet.

20. Terry had given his key to 20 The Avenue to Mr Morris who had in turn given it to Mrs Coombes in order that she could open the house for Reggie's funeral. Neither Mrs Edwards nor Terry was there, as both were still in hospital. On the day of the funeral John asked Mrs Coombes to give him the key, but she refused. John changed the lock on the back door and secured the front door from the inside. This was something that Mrs Edwards had asked him to do in the letter. Terry was thus effectively locked out of his home. Before Terry could be discharged from hospital he needed some clothes. Mr Morris telephoned the police and a meeting at the house was arranged. John and Carol were there too. Mr Morris collected some clothes for Terry and, according to him, he also showed John and Carol where he had hidden the cow and calf ornament upstairs. Terry was discharged from hospital some time that week and spent a couple of days with Mr Morris before returning home.

21. On 23 August WPC Atyeo and her colleague attended the house on a pre-arranged appointment. Terry and David Morris handed over certain items. Terry and John signed a record of what was handed over to John. The items handed over and signed for included all the items listed in Mrs Edwards' letter of 17 August, with the exception of the cow and calf ornament.

22. On 23 August Mrs Edwards had visitors. Carol identified the visitors as David Morris and Colleen Lewis; and this was not challenged. Carol also said that Mrs Edwards had told her that they had threatened her

with the police and a solicitor because she would not let Terry back into the property. According to the hospital notes, Mrs Edwards was upset after they left and said that she wanted to go to a nursing home on her discharge. She said that she did not want her son Terry to visit her in hospital; but also said that she “no longer” wished to have him evicted either. The nurse suggested that she had a think about it overnight, and then chat to the social worker. Mr Morris denied that he had threatened Mrs Edwards with the police or a solicitor. But the fact that Mrs Edwards was upset when the visitors went; and the fact that she both said that she did not want Terry to be evicted but also said that she wanted to go to a nursing home (rather than go home to Terry) corroborate Carol's evidence, which I accept.

23. On 30 August 2001 Mrs Edwards was transferred to Llwynypia hospital. A case conference was held at the hospital on 7 September 2001, at the request of the social worker. One of the purposes of the meeting was to “sort out” something about Mrs Edwards. Among those present were John, Carol, Terry, David Morris, Coleen Lewis, Mr Tolliday and a sister from the hospital. Why David Morris and Coleen Lewis were present at this family conference was not explained. In the course of the meeting Terry accused John of having taken £800 of Reggie's money. He did not, however, allege that John or Carol had taken any money out of Mrs Edwards' bank account. John and Carol had wanted Mrs Edwards to come home with them following her discharge, but Terry and Mr Morris objected to that course. One objection was that John and Carol did not have a downstairs lavatory. Mr Tolliday agreed that this was a problem. Someone (probably Mr Tolliday) suggested a placement at Aberpennar Court in Mountain Ash. According to Terry Mr Morris objected to that too. But the sister said that she thought that Aberpennar was a good nursing home, and it was agreed that Mrs Edwards should go there.

24. Mr Tolliday saw Mrs Edwards on 12 September, and she confirmed that she wanted to go into a nursing home; and agreed to go to Aberpennar for two weeks. He then spoke to Carol and John who agreed to the placement and agreed to take her there on the following day. He tried to speak to Terry; but could not do so. He left a message on a friend's answerphone. The friend in question was, I infer, Mr Morris because Mr Morris rang the hospital on the same day. He introduced himself as Mrs Edwards' “adopted son” and said that he was unhappy about Mrs Edwards' going to Aberpennar. He was told that Mrs Edwards' medical needs were paramount; that she had agreed to the move; and that a

two week placement was in her best interest. Mr Morris denied that it was he who had this conversation; but I reject his evidence. There is no one else who laid claim to the title “adopted son”.

25. Mr Tolliday wrote a letter on 14 September that summarised the position. He said that following the meeting he had arranged for a two week respite period at Aberpennar Court in Mountain Ash. Mrs Edwards had wished to go into the nursing home at Gelli Seren, which was much closer to home, but it was full. She did, however, ask for her name to be put on the waiting list for Gelli Seren.

26. John and Carol took Mrs Edwards to Aberpennar nursing home on 14 September 2001. John thought that it was a nice place and told his mother so. Carol said that Mrs Edwards also thought that it was a nice place. On the following day Terry and Mr Morris went to see Mrs Edwards. According to both Terry and Mr Morris Mrs Edwards was unhappy and wanted to leave. Mr Morris said that he took legal advice and was advised that if Mrs Edwards wanted to leave she could.

27. John and Carol went back to visit Mrs Edwards on the same day. Terry was there with David Morris and was proposing to take his mother out of the home. Either John or Carol asked one of the nurses to call the police. According to John he and Carol were asked to wait until Terry and David Morris had had a private meeting with Mrs Edwards. They accommodated this by going for a drive and returning one hour later. However, when they returned Terry had gone. But he came back soon afterwards accompanied by David Morris and Betty Coombes. The police were called at John's request. When they arrived they spoke to Mrs Edwards. The upshot was that the police said that they could not prevent Mrs Edwards from going; and John and Carol were asked to leave. Terry and Mr Morris did take Mrs Edwards away from the nursing home in a wheelchair. Before they did so they both signed an acknowledgement that they were taking her “against medical advice”. Although the advice was not given by a doctor, it was given by the deputy matron; and it was consistent with what Mr Morris had been told only two days earlier when Mrs Edwards was still in hospital. Terry's attempt in his witness statement and Mr Morris' attempt in the course of his oral evidence to discount the advice was unconvincing. Mrs Coombes, who was with them, knew nothing about this acknowledgment. Mrs Coombes said in her oral evidence (but not in her witness statement) that when Mrs Edwards arrived home she saw that the cow and calf ornament was not

on the mantelpiece and asked where it was. Terry and Mr Morris said that John and Carol had taken it. According to Mrs Coombes, Mrs Edwards said "I'm not dead yet". Terry described a similar incident in his witness statement, but placed it a few days later. Mrs Edwards' alleged response is, in my judgment, out of character. Nothing that I heard about her would have suggested such a sardonic reply. Moreover, it was well known in the family that the cow and calf ornament had been given to Mrs Edwards by her maternal grandfather, and that she wished it to be given to a niece on her mother's side of the family. Implicit in the alleged reply is an acceptance that after her death John and Carol might have been justified in taking the ornament. I do not accept that Mrs Edwards replied as she is alleged to have done.

28. John says that he was prevented from seeing his mother for a crucial period of about two weeks from 14 to 30 September. However, the real position seems to have been more nuanced.

29. Mrs Edwards was discharged from the nursing home on 14 September. That was a Friday. On the following Monday, 17 September, a social worker came round to see John and Carol. They gave her the wallet and certain other items, including Mrs Edwards' pension book. According to John's evidence in cross-examination, the social worker said that *Carol* would no longer be welcome at the house. She said nothing about John, but out of solidarity with his wife he thought that if she was not welcome, he would not go to the house either. Carol's account was the same. According to Carol the social worker said that Mrs Edwards did not want to see her, but that John could go down if he wanted to. The thought that his wife was not welcome at the family home was shocking both to John and also to Carol. They did not know what to do. They decided to go to visit their son Lee, who was living in Kent. Although they only planned to be away for a few days, their trip was prolonged because Carol was taken ill. They did not in fact see Mrs Edwards until 30 September.

30. For those two weeks Carol did not prepare Mrs Edwards' medication as she usually had. The medication included anti-depressants. Terry is dyslexic; and could not manage to give her more than painkillers when she needed them. At about this time Terry and David Morris agreed that Mrs Edwards should never be left on her own; and one of them was always with her.

31. On 20 September 2001 Mr Morris telephoned KTP

Solicitors in Williamstown. The attendance note of the conversation records that he said that he was calling about "his mother's will". Although Mr Morris denied that he had ever said that he was Mrs Edwards' son, I do not accept his evidence. Indeed the hospital notes record that on one occasion he introduced himself as David Edwards; in addition to having called himself Mrs Edwards' adopted son. I find that the attendance note is an accurate record of what Mr Morris said. Mr Morris called again on the following day (21 September 2001) and this time spoke to Mr Roberts of KTP. What Mr Morris told him is important. Mr Roberts kept a note of the conversation. The material points are as follows:

- i) Mr Morris said that there was no controversy;
- ii) Mr Morris told Mr Roberts that John had taken items from the house;
- iii) Mr Morris said that Mrs Edwards did not want to see "them" (presumably John and Carol) or benefit them in her will;
- iv) Mr Morris said that there was money missing from Mrs Edwards' bank account and that the police were investigating it;
- v) Mr Morris said that there was a certificate from the doctor that Mrs Edwards was in a lucid state of mind but that she had lost some mental capacity probably as a result of a fall.

32. There are a number of respects in which this account is exaggerated or inaccurate:

- i) It was misleading, in the light of the unhappy relationship between Terry and John and the effect that Mr Morris must have known that the changes to the will would have on John, to say that there was no controversy;
- ii) It was misleading simply to say that John had "taken" items from the house. Most of what he had removed had been the subject of the receipt signed by both him and Terry and, moreover, had been the items specified in Mrs Edwards' own letter. To say simply that he had "taken" items suggests that he had done so without Mrs Edwards' consent, which was untrue;
- iii) It was untrue to say that Mrs Edwards did not wish to see "them". At its highest all that could properly have been said is that Mrs Edwards had said that she did not

wish to see Carol;

iv) It was an exaggeration to say that the police were “investigating” missing money. As Mr Morris knew, because the police had told him, they were not investigating.

33. Whether Mrs Edwards did not want John to benefit under her will as a result of her own exercise of judgment and discretion is the critical issue in the case.

34. Mr Roberts went to see Mrs Edwards at her home on 24 September. This was 10 days after she had left Aberpennar nursing home in Mountain Ash. He was met by Terry and Mrs Coombes. He asked Mrs Coombes to leave, which she did. Terry seems to have remained in the garden. Mr Roberts went through the information which he had received from Mr Morris; and Mrs Edwards confirmed it. She told Mr Roberts that David Morris “is an adopted son although there is no formal adoption.” She told him that she owned the house. She told him that there were three children, Reg who had died, “John whose wife is making all the trouble and packed up all her possessions”; and Terry who lived with her. The note continues:

“There is the money which is being sorted out at the moment, which I am not going to pursue ... because I was not well after Reg died and I may have given it to him. But my sister took my possessions by locking Terry out and I want some of them back.

So I want everything to go to Terry because he looks after me and does my washing and cleans the house and does everything and appoint him as executor and solicitors.”

35. In further discussion about executors, she added that “Terry is able to stick up for himself and is really the chapsiest of them all.” She also told Mr Roberts that David Morris lived at 20 The Avenue, which was not true.

36. On the very same day, Mrs Edwards signed a mandate for her bank account authorising Mrs Coombes to operate it.

37. In late September Mrs Linda Williams recalls seeing Mrs Edwards. She describes her as being very distressed and crying and clinging on to her. Mrs Edwards told her that while she had been in hospital Carol had come and taken all the dishes out of her

cabinet and had also taken money belonging to her and to Reggie. Since she said this had happened while she was in hospital she can only have been repeating what she had been told by someone else. Mr Morris said in cross-examination that it was he who had told Mrs Edwards that John and Carol had taken money belonging to her and to Reggie. Terry said in his witness statement that he had told his mother that John and Carol had taken the ornaments.

38. On 2 October Mr Roberts sent Mrs Edwards a draft of the will. He asked to her to read it carefully and said that it could be amended to suit her requirements. He said that if it represented her wishes in every detail she was to call to arrange an appointment for it to be executed.

39. Between the date of Mr Robert's first and second visits Mrs Edwards had again been admitted to hospital. She was admitted on 30 September 2001, and she was discharged on 5 October. She would therefore have been in hospital when Mr Roberts' letter arrived. When she was admitted she did not have a nightdress or toiletries; and the hospital rang Carol; and she and John brought them over. As Carol had always done Mrs Edwards' washing, she had some of her clothes at home. The hospital notes record that on 4 October Terry tried to persuade the staff not to allow John and Carol to visit; but the staff explained that they would allow them to visit unless Mrs Edwards herself refused. She did not. John and Carol in fact visited her every day. On the day of her discharge on 5 October the hospital notes record that she told the staff that she was willing to go home with Terry and David Morris, but that she would like John and Carol to visit. Neither Terry nor Mrs Coombes mentioned this hospitalisation in their witness statements. Mrs Coombes went so far as to say that between 24 September and 10 October “Vicky was fine”. David Morris said that after Mrs Edwards came home from Aberpennar on 14 September “she progressed nicely”. Mrs Elaine Edwards also said that after Mrs Edwards came back from the nursing home “she was recovering nicely”. These assertions cast more doubt on the reliability of their evidence. The hospital notes also contradict Terry's assertion in his witness statement that Mrs Edwards said that she did not want John and Carol to visit. They also contradict the instructions that Mr Morris gave Mr Roberts to the effect that Mrs Edwards did not want to see John and Carol.

40. On 6 October John and Carol visited Mrs Edwards at 20 The Avenue and returned the various items that had been handed over to them with the signed receipt.

From then on until her death they visited almost every day.

41. On 10 October, Mr Roberts visited Mrs Edwards at home for the will to be executed. His attendance note records that he attended on "Mrs Edwards & son". I infer therefore that Terry was present. Mr Roberts described his visit in the attendance note as follows:

"Mrs Edwards was sitting up fully dressed in her chair by the fire. She knew fully what we had come for – to sign the will and power of attorney.

She understood the purpose of the will was to give everything to Terry her son who looks after her as she can't walk because of her legs – and he does everything for her.

I read through the will with her and she signed the will in my presence ...

With son [Terry] went through Enduring Power of Attorney which she understood fully as to the notes Part A and the document Part B which she signed and Terry signed in her presence and in mine."

42. The will was then executed. It appointed as executors Terry, Mrs Coombes and the partners in KTP. The will left the net estate to Terry. In the event of his death before Mrs Edwards it left the whole of the net estate to Mrs Coombes and David Morris in equal shares or to the survivor of them. David Morris was described in the will as "of 20 The Avenue Tonyrefail". KTP retained the original and gave a copy to Mrs Edwards. At some later date Mrs Edwards gave the copy will to Ms Lewis for safekeeping. Why she should give it to someone she did not know well was never explained.

43. On the very same day as that on which the will was executed, John went to his mother's house. He was involved in an altercation with Terry, as a result of which the police were called. He says that he thought that Terry was behaving irrationally and tried to push him out of the house. When the police arrived they spoke to Terry and to David Morris who was also there. The upshot was that John was asked to leave. Before he did so he said goodbye to Mrs Edwards, who asked him to come back on the following day, which he and Carol did. WPC Atyeo confirmed that there were many attendances at the house but that they were not all logged. Neither Terry nor Mrs Coombes (who was also

there) comment on this incident.

44. Some of the witnesses (Ms Lewis, Mrs Elaine Edwards and Mrs Ennis) said that in the last few months of her life Mrs Edwards was cared for by Terry, with the aid of home helps. Mrs Elaine Edwards went so far as to say that Terry had stopped drinking. I do not believe that last assertion. Not only is it unlikely that a man with Terry's drink problem could suddenly stop unaided, but Terry himself in a witness statement signed in March 2006 refers to his drinking in the present tense, and does not himself assert that he stopped drinking. His defence alleges that he has "always" enjoyed social drinking. Indeed he himself says nothing about his care for his mother during the last months of her life.

45. I should record the evidence that was given about what Mrs Edwards is alleged to have said about her new will. Mrs Ennis said that Mrs Edwards told her that she had asked Mrs Coombes to get a solicitor for her and that she had decided to change her will. The reason that she gave Mrs Ennis was that she wanted to leave the house to Terry because he had been so kind to her and had looked after her so well since she had come back from the nursing home. Mrs Elaine Edwards said that she recalled visiting Mrs Edwards a few days before she eventually died. She said that she was no longer afraid to die and seemed satisfied that everything was "sorted for Terry". I was also told that Mrs Edwards had accused John and Carol of putting her in the nursing home at Aberpennar Court "to die"; and that she was upset that they had "taken" her ornaments.

46. Mrs Edwards was readmitted to hospital in late 2001. She was discharged on 21 December with new medication for her heart. Carol cooked Sunday lunch as usual on 23 December; but Mrs Edwards was not feeling well. Dr Carne came to see her, at Carol's request, on Christmas Eve. Terry rang Carol later that day to say that Mrs Edwards was unwell. Carol rang the surgery but they told her to call an ambulance, which she did. Mrs Edwards was admitted to hospital once again, but she died on the following day. John made all the funeral arrangements.

47. There is no serious dispute about the law. The approach that I should adopt may be summarised as follows:

i) In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;

ii) Whether undue influence has procured the execution of a will is therefore a question of fact;

iii) The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition;

iv) In this context undue influence means influence exercised either by coercion, in the sense that the testator's will must be overborne, or by fraud.

v) Coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense;

vi) The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness' sake to do anything. A "drip drip" approach may be highly effective in sapping the will;

vii) There is a separate ground for avoiding a testamentary disposition on the ground of fraud. The shorthand used to refer to this species of fraud is "fraudulent calumny". The basic idea is that if A poisons the testator's mind against B, who would otherwise be a natural beneficiary of the testator's bounty, by casting dishonest aspersions on his character, then the will is liable to be set aside;

viii) The essence of fraudulent calumny is that the person alleged to have been poisoning the testator's mind must either know that the aspersions are false or not care whether they are true or false. In my judgment if a person believes that he is telling the truth about a potential beneficiary then even if what he tells the testator is objectively untrue, the will is not liable to be

set aside on that ground alone;

ix) The question is not whether the court considers that the testator's testamentary disposition is fair because, subject to statutory powers of intervention, a testator may dispose of his estate as he wishes. The question, in the end, is whether in making his dispositions, the testator has acted as a free agent.

48. All the witnesses agreed that Mrs Edwards was a lovely lady: kind, generous, fair, hard working; and not in the least spiteful or vindictive. By the time that she came to make her will she was 86 years old and had recently been hospitalised. She had serious mobility problems. The professionals judged that it was in her medical interests to spend two weeks (at least) in a nursing home from 14 September. Yet within that same period she had given instructions for a new will. She was in hospital again before she executed it. In my judgment she was physically frail and vulnerable. She was greatly distressed by Reggie's death and in my judgment this weakened her further. Her frailty was graphically demonstrated by Linda Williams' account of her crying and clinging to her, just about the time that the will was in course of preparation. Reggie was her favourite son, but she loved the other two as well. However, as I have said, she was also distressed by Terry's drinking and was frightened of him. I am satisfied that she did want him out of the house for a time in August 2001 although she changed her mind within ten days or so. She changed her mind because of the threat of involvement of the police and lawyers. The witnesses also agreed that Terry did not get on well with either of his brothers. He and Reggie hardly spoke to each other, and I have already related a number of altercations and arguments between him and John. The only evidence I heard of Mrs Edwards' leaving her home (except for medical reasons) was that she went on holiday twice with John and Carol, and she went to stay with them immediately after Reggie's death. The independent evidence described Carol as a supportive or very supportive daughter in law. I have already described her as Mrs Edwards' mainstay. When either Reggie or Terry needed something to be done, it was to Carol that they turned. Apart from a very short period during which, for some reason, Mrs Edwards said that she did not want to see Carol, I am satisfied that their relationship remained close. After all, Carol cooked Sunday lunch for the family on the last day that Mrs Edwards spent at home; and it was Carol who brought her things over to the hospital earlier in the month.

49. I must now explain why I do not accept the

evidence about Reggie's alleged discovery of missing money. First, the bank statement that is said to have caused Reggie to conclude that Carol had taken money (which showed a balance of £7,811) is a statement that records entries up to 3 August 2001; so it cannot have been opened in July. Second, the allegation is that Reggie only saw one bank statement, even though monthly statements were sent to Mrs Edwards at home. It is difficult to see how, on the basis of a single bank statement Reggie could have concluded that money was missing from the account. Third, since monthly statements were sent to Mrs Edwards she would have known (or at least have had the means of knowing) what her bank balance was from time to time. Fourth, Carol's evidence about the giving of Christmas money was unchallenged. So Mrs Edwards must at least have known that she had given away £4,000 in Christmas money; and Reggie himself must have known that he had received £1,000 of it. Terry himself says that his mother had at least £900 in cash at home. Fifth, the only other bank statement that has been produced and which covers the period from October to November shows a cash withdrawal of £2,000 in November, which tallies with Carol's evidence. Sixth, by July or August 2001 there would have been bills to pay, including council tax, utilities and the nursing home, all of which had been paid by Carol; and of which Mrs Edwards must have been aware. Seventh, on 30 July 2001 Reggie entrusted Carol with the documentation relating to his entitlement to exemption from paying for a vehicle licence, which Carol arranged on his behalf. That is hardly the action of one who was furious with Carol and thought that she was a thief. In addition Mrs Ennis said that Mrs Edwards trusted Carol during the period when she was in hospital in August, which is inconsistent with a belief that Carol had been stealing from her. Eighth, although Terry accused John in the course of the case conference on 4 September of having taken £800 of Reggie's money, he made no accusation about taking money from Mrs Edwards. Since the purpose of the case conference was to discuss Mrs Edwards' welfare, an allegation of theft from her would have been more relevant to the matters in hand than an allegation about theft from his dead brother. Yet no such allegation was made. Ninth, although Terry and Mr Morris said that they had gone to the police, they did not do so until after Mrs Edwards was discharged from Aberpennar on 14 September 2001. If there was a suspected theft in July or August, then given the ease with which the family involved the police, it is surprising that they did not go to the police earlier; or make the accusation to the police when the police were called to the house (which happened at least twice in August). In fact when they did go the

police took no action; and they explained to Mr Morris and to Terry that they would not. Both John and Carol said that Reggie never accused them of taking money from Mrs Edwards' bank account; and that if he had had any concerns he would have done so. I accept their evidence. I conclude therefore that the story about Reggie having suspicions about Carol taking money is untrue. In my judgment it was invented by Terry in September 2001. Mrs Coombes did not allege in her witness statement that Mrs Edwards said anything about missing money before her return from Aberpennar in September. I reject her evidence given in cross-examination that Reggie told her about it before he died. I reject also the evidence of Mrs Elaine Edwards to the same effect; which also sat uneasily with her evidence that it was Carol she telephoned a few days later to find out about the arrangements for Reggie's funeral.

50. Why would Mrs Edwards have changed her will so as to cut out not only John, but also Lee? One hypothesis is, of course, undue influence by Terry. What are the others? The reason that she gave to Mr Roberts for her testamentary dispositions was that Terry "looks after me and does my washing and cleans the house and does everything." That was plainly untrue. Carol did her washing; Carol did her shopping; and Carol cooked a weekly meal. Mrs Ennis said that it was Mrs Edwards who looked after Terry and Reggie; not the other way round. Until Mrs Edwards went into hospital in August, Terry was frequently drunk, aggressive and verbally abusive. Even David Morris only says that Terry *and Reggie* got the coal in and did the heavier jobs around the house. Terry's own defence says that Mrs Edwards did the cleaning at least until Reggie's death. Even if Terry had changed his ways after she left Aberpennar (which I do not accept) that was only ten days earlier. Ten days' good behaviour is a wholly inadequate reason for changing a will so radically. Whatever Terry might have done between October and Mrs Edwards' death in December cannot have influenced her decision to change her will in September. Accepting, as I do, that that is indeed what Mrs Edwards told Mr Roberts, I cannot accept that she can have meant it. Another hypothesis is that Mrs Edwards wanted to secure a roof over Terry's head. That might have explained leaving the house to him. But the estate consisted of more than the house: it included Roy Edwards' compensation claim. Why deprive John of any share in that? Moreover, if Mrs Edwards' motive was to secure a roof over Terry's head that cannot explain why the gift over of the house in the event of Terry predeceasing her was to Mrs Coombes and Mr Morris rather than to John. In addition, if that was her real reason, why did she not

explain that to Mr Roberts, rather than give him a reason which she must have known was untrue? Another hypothesis is that Mrs Edwards was upset by the removal of her ornaments, and especially the cow and calf ornament which was of particular sentimental value. This hypothesis is also inadequate. The ornaments that were removed were removed because Mrs Edwards asked Carol and John to go and find them. They were handed over in the presence of the police and John signed a receipt for them. As soon as she asked for their return, John and Carol went to fetch them. She cannot have thought without prompting from someone that Carol and John had stolen them. Who could have led her to that conclusion apart from Terry or David Morris? Mr Morris accepted in cross-examination that he had told Mrs Edwards that John and Carol had taken things; and that the way that he said this would have given Mrs Edwards the impression that they had taken things for themselves rather than for safekeeping. So far as the cow and calf ornament was concerned David Morris' evidence was that it was he who in the first instance removed it from the mantelpiece where it was accustomed to stand and he who had hidden it upstairs in Terry's bed. Next there is the hypothesis of the missing money. This hypothesis rests on two factors. First there is Reggie's wallet. But as I have said, in accepting John's evidence, it was Mrs Edwards who asked John to find the wallet and when he had done so he gave it to Mrs Edwards. The second factor is the allegation of money missing from Mrs Edwards' bank account. In a rather confused sentence about money in Mr Roberts' attendance note of 24 September Mrs Edwards is recorded as saying "There is the money which is being sorted out at the moment, which I am not going to pursue because I was not well after Reg died and I may have given it to him." To whom she thought she had given the money is not clear; but the fact that she was not going to pursue it indicates that it was not of prime importance. Indeed the very confusion of this sentence suggests that there was a "script" which Mrs Edwards had only imperfectly learned. Any allegation that John or Carol had taken money was fed to Mrs Edwards by Terry or Mr Morris (or both) after her return from Aberpennar. In addition it must not be forgotten that between the date on which she gave instructions for the will and the date on which she executed it the hospital notes record that she positively wanted John and Carol to visit her. That is not the attitude of one who voluntarily cuts John out of the will. Finally, none of the hypotheses offer any explanation for the cutting out of Lee.

51. The role of David Morris also excites suspicion.

None of those who claimed to have been Mrs Edwards' close friends mention his having been at 20 The Avenue before the last few months of Mrs Edwards' life. Mrs Elaine Edwards does not mention him at all. Apart from having been a lodger some thirty five years earlier, he comes onto the scene when Terry was asked to leave 20 The Avenue in early 2001. Yet it was he who objected to Mrs Edwards' leaving the hospital; and he who took the legal advice before Mrs Roberts was removed from Aberpennar. He claimed to be Mrs Edwards "adopted son" and went so far as to introduce himself as "David Edwards". He introduced himself to KTP as calling about his "mother's will". This was grossly misleading. I have already explained the respects in which I consider that the instructions that he gave to Mr Morris were misleading or exaggerated. When Mr Roberts saw Mrs Edwards she told him that Mr Morris lived at 20 The Avenue and he was so described in the will. Why? The only plausible explanation is that that is what she was told to say. Mr Arentsen said that the fact that Mr Morris told Mr Roberts that Mrs Edwards had lost some mental capacity was evidence of his good faith. However, it seems to me that it is more probable that he said that in order to guard against the possibility that Mrs Edwards might stray from the script. In the course of his oral evidence he took every opportunity to question John and Carol's integrity, even going so far as to allege that Mrs Edwards' signature on the letter of 17 August 2001 had been forged by Carol. It was plain to me that he was highly partisan. He is also a forceful personality. He accepted in cross-examination that it was he who told Mrs Edwards that John and Carol had taken her ornaments, giving rise to the impression that they had taken them for themselves. He added in cross-examination that he had told Mrs Edwards that John and Carol had also taken her black bag containing insurance policies; and also two purses with £600 in them. It was not suggested by counsel that John or Carol had in fact done any of these things. So here is another attempt to blacken their name by Mr Morris.

52. How could it have come about that Mrs Edwards said that John and Carol had put her in Aberpennar Court to die? The truth was that they had wanted her to come home with them; but David Morris objected on the ground that they had no downstairs toilet. Two days before Mrs Edwards actually went to Aberpennar it had been explained to her that it was a two week placement. She cannot have forgotten that within two days. She can only have thought that she had been put there by John and Carol to die if someone had told her that. Who could have told her that apart from Terry or Mr Morris?

53. Terry took the view, as he told WPC Atyeo, that everything in the house belonged to him after Reggie's death. His vindictiveness towards John is demonstrated by his throwing out the clock. I have no doubt that he was extremely angry about the letter of 17 August 2001 which threatened to evict him, and which WPC Atyeo showed him in hospital. Since the letter was in Carol's handwriting he must have blamed John and Carol for at least helping his mother to write it. He was also told by WPC Atyeo that the property was not his; and would not be his except at Mrs Edwards' request. For Terry, therefore, the way to secure his future would be to get his mother to change her will. Otherwise he would be at risk that John might try to turn him out. It would also get back at John and Carol. He involved his friend David Morris in the plan.

54. One part of the plan must have been to keep Mrs Edwards at home. That is why David Morris objected strongly when it was proposed to move Mrs Edwards from the hospital to the nursing home at Aberpennar, even though he was told that it was in Mrs Edwards' best interests to go there. It is why Terry and David Morris removed Mrs Edwards from the nursing home on the very next day, again against advice. Although there was no formal "ban" on John visiting Mrs Edwards, Terry must have known that if a ban was imposed upon Carol's visiting the practical effect would be that John would not visit either. In addition Terry tried to push John out of the house on the very day that the will was executed.

55. There is no doubt in my mind that Terry had every motive for persuading his mother to alter her will by any means available. Not only was he furious with John and Carol, he must also have been fearful for his own security in his home. He had demonstrated his vindictiveness towards them. There is also no doubt in my mind that Terry had the opportunity to use undue influence in persuading his mother to change her will. He had taken his mother back to 20 The Avenue despite medical advice to the contrary; he had deterred John and Carol from visiting, even if there was no formal ban; and he had tried to push John out of the house on the day that the will was executed. She was frail and vulnerable, and frightened of Terry. Did he take that opportunity? In my judgment he did. There is no other reasonable explanation for Mrs Edwards having levelled such false accusations against John and Carol; and for having given such a palpably inadequate and false explanation to Mr Roberts of the reasons for changing her will. I conclude that Terry deliberately poisoned his

mother's mind by making deliberately untruthful accusations against John and Carol with the aid of Mr Morris; and that the effect of his doing so was to cause her own discretion and judgment to be overborne. In changing her will she was simply doing as she was told. In my judgment that amounts to undue influence.

56. The result, therefore, is that I pronounce against the will of 10 October 2001 and pronounce in favour of the will of 16 July 1990.

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