

Retrial ordered after incorrect approach to evidence assessment (**Brunt v Wrangle**)

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Private Client analysis: The court held that the master had approached his assessment of the evidence incorrectly, as he followed the approach to the assessment of evidence and making a finding of facts set out in *Re Parsonage*. Furthermore, in his judgment, the master did not deal with all the witnesses, their possible motives for lying and the extent to which the master had relied on their demeanor. It was therefore unclear how the master concluded that one party's witnesses should be believed over the others. The master also failed to give weight to the evidence indicating forgery, such as the clear expert evidence that the Will had not been signed in 1999. As a result, a retrial was ordered. Written by Rachel Leech, associate solicitor at Birkett Long LLP.

Brunt v Wrangle (28 January 2021)

What are the practical implications of this case?

This case sets out how the court should assess evidence, especially when dealing with a forgery case where there is no agreed contemporaneous evidence. The case clarifies that while the court does not have to give the reason for every decision, nor make a finding of fact about every issue, it is important that the parties understand the reasons for the court's decision, and the court should also deal with all the witness evidence and its conclusion on the same.

What was the background?

The case concerns whether a Will purportedly made by Dean Brunt in 1999 was a forgery and whether he knew and approved its contents. Dean died in 2007 and the Will was produced in 2017, eight days before a mediation concerning other family disputes. The Will was signed on behalf of Dean by a land agent, who had previously been convicted of an unrelated fraud, and who died before the trial. A second original Will was found shortly before trial, also signed on behalf of Dean by the land agent. There was no dispute about whether the signatures are genuine; instead, it was about whether the Wills were signed in 1999. The signatures on the two Wills differ slightly. Both parties' handwriting experts agreed that the signatures match the land agent's signatures later in time, rather than in 1999.

Other evidence included the land agent's diary: the experts concluded the entry relating to the Will was appended at a different time and in a different ink to the other entries on that date. There were also other unusual circumstances which indicated that the Will was a forgery.

The original trial, which took place in March 2020, should have lasted eight days but was shortened to three days due to the pending coronavirus (COVID-19) lockdown. Only key witnesses were cross-examined, which did not include the experts.

Master Teverson found that the Will was valid ([\[2020\] EWHC 1784 \(Ch\)](#)); see News Analysis: [Wills lost for ten years are proved with help from a clumsy cat \(Re Brunt \(deceased\)\)](#). He approached the assessment of the evidence in accordance with the *Re Parsonage* principle (from *Re estate of Beryl Parsonage (deceased) Parsonage (acting as personal representative in the estate of Beryl Parsonage (deceased)) v Parsonage and others* [\[2019\] EWHC 2362 \(Ch\)](#)). This approach takes reliable contemporaneous evidence to make finding of facts, then adding established or probable facts before adding witness evidence, which is consistent with the reliable documentary evidence. It was argued this approach was wrong because there was no reliable contemporaneous evidence as the authenticity of the documentary evidence (eg the Wills and diary entry) was disputed.

What did the court decide?

On appeal, Mr Justice Green found that while not all the facts need to be referred to in a judgment, the court had to be able to see why the trial judge had concluded as he did.

In light of the trial being cut short and not all the witnesses being heard, the court would have expected the master to refer to all the witness statements, the importance he had placed on them, and whether he had accepted or rejected the witnesses' evidence. The master also failed to consider the witnesses' possible motives for lying and the extent to which he relied on their demeanor. It was therefore unclear how the master had concluded that one party's witnesses could be believed over the other. Furthermore, there was no explanation why he had concluded that the first defendant was an 'unimpressive witness' or what he meant by having taken into account of the land agent's 'bad character'.

The approach set out in *Re Parsonage* was not appropriate as there were no reliable contemporaneous documents, as this was a forgery case. The master should have considered all the evidence as part of a balancing exercise.

The master had failed to give weight to the evidence signifying forgery, including the expert evidence which concluded the Will had not been signed in 1999. As this did not fit with the master's finding of facts, he rejected it, which was a serious flaw in his assessment of the evidence and more weight should have been given to it. A retrial was ordered before a High Court judge.

Case details

- Court: High Court, Business and Property Courts of England and Wales
- Judge: Green J
- Date of judgment: 28 January 2021

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