

The case of the torn up Will....

Bill and Janet lived together for 20 years. They had both been married before and Janet had a son, Phillip, from a previous relationship. Janet was diagnosed with a terminal diagnosis in January 2017 and sadly passed away on 25 February 2018. Bill was recovering from a hip operation in hospital at the time of Janet's death. Janet had made a Will in 2010 and requested the original Will to be sent to her so that she could store it together with important papers in her bureau. She told Bill that she had made a Will and informed him where it was stored. She also told her closest friends where the Will was stored and what she wanted to happen after she died.

Two days after Janet's death, Phillip went into the property and accessed the bureau. He declared to Bill and their friends that he could not find a Will. He said that he believed his mother had torn up the Will prior to her death because she decided that she wanted Phillip to receive the entirety of her estate under the Rules of Intestacy. He said that he was going to apply for a Grant of Letters of Administration accordingly.

Bill and their friends were very suspicious of Phillip's behaviour. Unfortunately though, Bill did not have a copy of the Will and the solicitors who prepared the Will had also not retained copies nor kept their file. The solicitors did however suggest to Bill that he undertake a search of the National Will Register to see if the Will had been registered. Bill duly undertook this search and the Will had been registered so he was able to locate a copy. On reading the Will, Bill noted that Phillip only received a relatively small pecuniary legacy whilst he had been left the majority of the estate.

Bill received legal advice and applied for a Grant of Probate of the copy Will. Normally, when a testator takes control of the original Will and it cannot be found after death, the presumption is that the testator revoked it by destroying it. However, Bill was able to rebut this presumption due to Janet's constant assertions about her testamentary intentions and Phillip's suspicious activities after Janet's death.

If the Will had not been registered on the National Will Register, Bill would have been unable to obtain a copy of it and so not been able to obtain the Grant of Probate. That would have meant that Phillip would have obtained the entirety of the estate due to the Rules of Intestacy. Janet's wishes would not have been upheld and Bill would have been disinherited. Bill would have then had to obtain legal advice on how he could try to obtain a benefit from Janet's estate that would undoubtedly have been costly and time consuming.

Our Contentious Trusts and Probate Department at Meridian Private Client are able to advise clients on the options available to them when a loved one passes away and they have been apparently disinherited or a family member is acting suspiciously to the client's detriment. Our contact details are set out below:

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This article was produced on 10 May 2018. It should not be relied upon as legal advice as individual circumstances will differ.

The content of this newsletter is not a detailed statement of all the law on the matters referred to. Specialist advice should be taken from ourselves in all cases.