

Things that (don't) go bump in the night: *Ginger & Ors v Mickleburgh & Ors* [2026] EWHC 100 (Ch)

SUMMARY

On 23 January 2026 and following a seven-day trial before HHJ Blohm KC in the Business and Property Courts in Bristol in August 2025, judgment was handed down in *Ginger & Ors v Mickleburgh & Ors* [2026] EWHC 100 (Ch).

The Claimants successfully overturned their late father's only will on the basis he was suffering from delusions, which caused him to execute a will largely excluding them.

BACKGROUND

On 3 December 2014 Michael Gwilliam - then aged 72 - executed a will. This had been drafted on his behalf (and then witnessed by) a will-writing paralegal with over 22 years' experience.

At the time, Michael lived alone in an old farmhouse in the Forest of Dean, described by the judge as "*a rural, ancient and somewhat secluded part of Gloucestershire, in the Wye Valley, with its own distinctive character.*" His ex-wife and three of his four daughters lived nearby, and prior to 2014 he had a close relationship with all of them. The Third Defendant Ms Brooks also lived nearby and they had previously cohabited.¹

From late-2013 onwards, Michael had become increasingly erratic, reporting noises and harassment from his neighbours late at night on a regular basis.

As a result, Michael was detained under the Mental Health Act 1983 ('sectioned') for two weeks in February 2014 (some 9 months prior to the execution of the 2014 Will). At all times during and after being detained, Michael insisted there was nothing wrong with him; that the late-night noises, the harassment and conspiracy were real and continuing; and that the sectioning was a plot against him, of which his daughters were a part. He was encouraged and supported in these views by Ms Brooks and Ms Gwilliam.

Present at the time of execution in December 2014 was the will writer, Michael's sister Ms Gwilliam (D2), Ms Brooks (D3), Michael's community mental health nurse, and a solicitor (from a different firm and engaged on a separate matter). All appointments had been arranged by Ms Brooks and in at least one instance, she had corresponded with the will-writer by email on the terms to be included.

The will gave 75% of his estate to be divided between Ms Brooks, Ms Gwilliam and his nephews in three equal shares. The remaining 25% was divided equally between his four

¹ The precise nature of their relationship was contested, but likely came to an end c.2010.

daughters, (though this latter gift had been a concession at the suggestion of the will-writer) [249].

Shortly thereafter, Michael signed a letter of wishes (written by Ms Brooks) explaining his decision [39]. In it he accused his daughters of conspiring with their mother to have him sectioned in order to sell his home; obtain power of attorney and steal his belongings.

Michael passed away seven years later, in early 2022.

THE CLAIM

Michael's daughters brought a claim to invalidate the will on the basis he lacked testamentary capacity. They did so primarily under the fourth limb of the *Banks v Goodfellow* test, and in particular, that Michael was suffering from delusions which impacted the dispositions made in the will.

An alternative claim was made that the will was invalid as it was procured by fraudulent calumny – that Ms Brooks and Ms Gwilliam knowingly spread mistruths about the Claimants about their mother to Michael, with the intention and effect of encouraging him to execute a will limiting or excluding their inheritance.

Michael had never executed a will previously (this was found to have been a conscious decision). Accordingly, if the claim succeeded, his estate would be distributed between his four daughters under the rules of intestacy.

The Defendants argued that the noises and harassment Michael was experiencing from his neighbours was real, and that (1) he was right that his daughters had conspired to have him sectioned for their own benefit, alternatively (2) his displeasure at the involvement of his daughters in his detention was understandable and therefore not delusional. [222]

JUDGMENT

Testamentary capacity

The claimants' testamentary capacity claim succeeded. HHJ Blohm KC found:

- (1) That Michael's perception of noises and other harassment late at night were not real. They were not mere mistaken beliefs, but rather delusions. Moreover: '*These were not innocent or trivial delusions. He had brandished an air rifle; spent time out of doors; had been up all night; was driving around threatening kill or to injure others; and was accusing his close blood relatives of a mercenary conspiracy against him.*' [242]
- (2) These delusions continued until the time the will was executed. [241]

- (3) Michael's belief that his ex-wife and daughters conspired against him to have him sectioned in order to obtain his property/his belongings/power of attorney *was itself* a delusion and this too continued until the time of the will [242-3].
- (4) In the particular circumstances surrounding preparation and execution little weight could be given to the will writer's assessment of Michael's capacity.
- (5) The consequence of the delusion was that Michael failed not only the fourth limb of ***Banks v Goodfellow*** (insane delusions influenced his will), but also the third, as he was unable to properly comprehend and appreciate the claims of his daughters on his estate. [255]

Fraudulent Calumny

The court was satisfied that Ms Brooks and Ms Gwilliam told Michael numerous things which were not true and that they did so in order to persuade him to change his will [271]. Moreover, the will would likely not have been executed without Ms Gwilliam and Ms Brooks' interventions [273].

However, it was more likely than not that Ms Brooks and Ms Gwilliam believed what they were telling Michael to be true, even in circumstances where they told him these things was to persuade him to change a will and there was a lack of singular lack of evidence for them. The judge commented that their beliefs said "*more about their own credulousness and cynicism than anything else...*" [272]. For this reason, the fraudulent calumny claim failed.

COMMENTARY

Delusions

Successful 'delusions' claims are few and far between. Since Falk J clarified the necessary components for a delusion in a testamentary capacity context in ***Clitheroe v Bond*** [2021] EWHC 1102 (Ch), there has only been (to the writer's knowledge) one reported decision – ***Oliver v Oliver*** [2024] EWHC 2289 (Ch).

That the judge identified Michael's belief that he was being continually harassed during the night by conspiratorial neighbours as a delusion should not come as a surprise. This belief persisted on an almost nightly basis, over many months and there was ample evidence that he could not be persuaded otherwise, even with friends or family standing next to him. [240-241]

A particular issue in this case was demonstrating that the delusions had a causative effect on the dispositions in the will. Although there was evidence that Michael considered the harassment to be part of a wider conspiracy against him (which incorporated his daughters, hence their exclusion) the judgment focusses on the fact that Michael had no insight into his condition and could not countenance the possibility that he was unwell.

Accordingly, he believed any attempts to dissuade him of his beliefs - or to ensure he received professional help and/or medication – must have been motivated by *'mercenary and evil motives'* [241]. This belief was *itself* a delusion, which evidently affected the will. Indeed without it, the judge found Michael would have maintained his prior, conscious decision to die intestate.

In the appropriate case, this is likely to have wider applicability. The very nature of delusions means that the individual in question is unlikely to have insight into their condition. As such, If A suffers from delusions and B tries to help them and/or persuade them their perceptions are false and is subsequently excluded from their will, the judgment demonstrates that A's beliefs about B can constitute further delusions.

Practitioners should also note the benefit of the *'strong presumption'* referenced in ***Banks v Goodfellow***, that established delusions did affect the will.

Finally, attention should be paid to the fact that Michael also failed the third limb of the ***Banks*** test, even though he was clearly capable of remembering his children and consciously chose to exclude them. The case is a useful reminder that *'comprehend and appreciate'* in this context does not simply mean *'remember'* but instead includes some level of (competent) assessment.

Will Writer's Capacity Assessment

In line with recent decisions, the judgment pays homage to the principle that a competent assessment by the will writer is likely to hold particular weight. However, here the court felt able to disregard the testimony of the experienced will writer, for two principal reasons:

- (1) Her diligence in this case was not impressive. There was no attendance note and even though she was aware that Michael:
 - a. was seeking to exclude his children;
 - b. had been prescribed anti-psychotic drugs; and
 - c. had been sectioned earlier in the year,

she did not obtain medical records, discuss matters with his GP, explore or interrogate the reasons for excluding the children, or comply with the golden rule by obtaining a capacity assessment.

- (2) Secondly, in circumstances where a testator is able to 'present well' but has hidden delusions or disorders of the mind, a will writer's assessment is less helpful: *'where there may be a mental defect which is hidden from all apparent inspection or observation, such an opinion cannot assist'* [245]. This echoes the findings of HHJ Matthews in ***Oliver v Oliver*** (para 97) and is likely to be of particular assistance to practitioners advancing a claim under the fourth limb of ***Banks v Goodfellow*** where the testator has been able to express their testamentary instructions seemingly coherently.

Fraudulent Calumny

Finally, even though the judge was sharply critical of Ms Brooks and Ms Gwilliam, concluding that they had openly communicated harmful mistruths about his daughters to him, with the intention (and effect) of getting him to execute a will which largely excluded them, the judge was unable to conclude they did so *knowing* these things to be untrue. The case is a salient reminder of the difficulties of proving fraud in a fraudulent calumny claim.

*Joss acted for the successful claimants in **Ginger v Mickleburgh** and **Oliver v Oliver**.*