

Will dispute costs - the exception that proves the rule

It is often assumed – wrongly – that in litigation involving the validity of a Will the parties' costs will be met from the estate. This can lead the unwary litigant to think that they are litigating risk free.

The recent case of [Elliott v Simmonds \(\[2016\] EWHC 962 \(Ch\)\)](#) is a stark reminder to those who challenge a Will and their advisors that this is not the case.

The question of costs in Will dispute cases is complex. The ordinary rule is that the loser will pay the winner's costs but the Court has a wide discretion and there are exceptions.

The Elliot case

In the Elliott case, the daughter of a wealthy businessman, Ms Simmonds, challenged her late father's Will on the grounds that he did not have capacity to make it, did not approve its contents and was coerced into making it.

Ms Simmonds, required the beneficiary of the Will, Ms Elliott, to formally prove the validity of the Will in Court. Rather than provide evidence to prove the Will was not valid, Ms Simmonds put the onus of proving validity entirely on Ms Elliott, while reserving the right to question the witnesses to the Will.

The Court accepted the Will was valid and had to decide who should pay the costs.

The Court decides on costs

Ms Simmonds tried to rely on a technical rule whereby she argued that because she only questioned the witnesses to the Will, rather than put forward her own evidence, she should not be ordered to pay Ms Elliott's costs.

She did not however allow for the exception to the exception: where there are no reasonable grounds for doubting a Will's validity in the first place, the losing party may be ordered to pay the winning party's costs. This is how the Court ruled in Ms Simmond's case and she was ordered to pay Ms Elliott's costs.

The implications for Will disputes

The case highlights the importance of a careful evaluation of the merits when considering a challenge to a Will. In cases where there is conflicting evidence and emotions are running high, it can be difficult to see the wood for the trees. It is therefore vital that the parties or potential parties to a Will dispute obtain specialist advice in this complex area.

On occasion the advice given may not be palatable; however, obtaining an objective view on the merits of the case at the outset can lead to a saving in legal fees in the long run.

For [further information](#) regarding disputing a Will, please contact:

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