

ENGLAND AND WALES / JUDGMENT

Julie Marie Croll v The Estate of Margaret Mary Thorpe & Ors

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Neutral Citation Number: [2026] EWHC 2232 (Ch) Case No: PT-2025-000705 IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY TRUSTS AND PROBATE LIST (ChD) Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: 28/8/2026 Before: MASTER CLARK

- ----- Between: JULIE MARIE CROLL

- and - Claimant

(1) THE ESTATE OF MARGARET MARY THORPE DECEASED

(2) JACQUELINE MARY CULLIS

(3) PETER DENNIS THORPE Defendants

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- ----- The Claimant in person The Second Defendant in person The Third Defendant in person Hearing date: 16 July 2026

- ----- Approved Judgment This judgment was handed down remotely at 2pm on 28 August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Croll v Estate of Margaret Mary Thorpe Master Clark: Application 1. This is my judgment on the defendants' application dated 26 March 2026 to strike out and/or for summary judgment against the claimant. Parties and the claim 2. The claimant, Julie Marie Croll, and the second and third defendants, Jacqueline Mary Cullis and Peter Dennis Thorpe, are siblings, and the adult children of Arthur Dennis Thorpe ("Mr Thorpe") and Margaret Mary Thorpe ("Mrs Thorpe"). Both parents are, sadly, no longer alive. Mr Thorpe died on 7 February 2024. Mrs Thorpe died on 2 May 2025. 3. The claim, commenced on 8 July 2025, seeks to propound Mr Thorpe's will dated 17 August 2021 ("the 2021 will"). That will leaves his estate to the claimant, or if she predeceases him, to her three children in equal shares.

4. Mrs Thorpe's estate is the first defendant to the claim. This reflects the fact that Mr Thorpe's previous will dated 5 March 2001 ("the 2001 will") leaves his estate to Mrs Thorpe, or if she predeceases him, to their three children in equal shares. In those circumstances, there were no grounds for including the second and third defendants in their personal capacity as

defendants to the claim, because they have no interest under the 2001 will. 5. 6. 7. However, Mrs Thorpe's last will, dated 5 April 2024, appoints the second and third defendants as her executors. No grant of probate to them has been made. The claimant has entered a caveat, and is challenging Mrs Thorpe's will in a separate claim. On the claimant's application (under CPR 19.12(2)(b)(ii)), on 28 July 2025 (as amended on 31 July 2025), Master Bowles made an order appointing the second and third defendants to represent Mrs Thorpe's estate in the claim. I refer to them in that representative capacity as "the defendants", and in their personal capacity, without intending any disrespect, as Jackie and Peter. testamentary capacity; The defendants' position is that the 2001 will was Mr Thorpe's last valid will. They challenge the validity of the 2021 will on grounds including: (1)

- (2) want of knowledge and approval; (3) (4) undue influence; fraudulent calumny. Croll v Estate of Margaret Mary Thorpe 8. All parties are acting in person. The dispute between them has a long-running and bitterly acrimonious history. Factual background
9. Mr and Mrs Thorpe were married on 22 August 1964. In December 2017, Mr Thorpe, then aged 78, suffered a stroke. The nature and extent of his cognitive impairment following his stroke is a key issue in this claim.
10. On 23 April 2018, Mr and Mrs Thorpe moved out of their home to live with Peter. On 24 June 2021, they went to stay with the claimant for a few days. Mr Thorpe did not return, but remained living with the claimant until his death. The circumstances in which he did so, and the events which followed (including the institution of divorce proceedings against Mrs Thorpe), are highly contentious.
11. Mrs Thorpe returned to live with Peter on 1 or 2 July 2021, and remained there until her death on 2 May 2025.
12. During July and August 2021, a number of documents concerning Mr Thorpe's property, finances and testamentary intentions were prepared by a firm of solicitors, KG&Co, and executed by Mr Thorpe. These included, on 20 July 2021, lasting powers of attorney for both (i) property and affairs and (ii) personal welfare ("the LPAs") in favour of the claimant and her two daughters, Jessica and Louisa Croll (to whom I also refer by their first names). In September 2021, at the claimant's instigation, a second firm, Howard Kennedy LLP ("Howard Kennedy"), began acting for Mr Thorpe in connection with divorce proceedings against Mrs Thorpe. 13. In May 2022 Howard Kennedy commissioned a report on Mr Thorpe's capacity from Dr Simon Adelman. Dr Adelman undertook a mental state examination concluding that Mr Thorpe's MoCA1 score was as low as 8/30 and that "at the time of assessment and on the balance of probabilities [Mr Thorpe] lacked mental capacity to conduct divorce proceedings (capacity to litigate)." Howard Kennedy then ceased substantive work on the case.

14. On 8 July 2022, the Office of the Public Guardian applied in the Court of Protection (“COP”) to set aside the LPAs. The respondents to that application when it was finally determined were the claimant and Jackie. 1 Montreal Cognitive Assessment – a recognised test of cognitive impairment Croll v Estate of Margaret Mary Thorpe
15. On 22 November 2022, the claimant and Jessica applied to the COP to be appointed Mr Thorpe’s deputies for property and affairs. The respondents to that application were Jackie, Peter and Louisa. 16. Finally, on 26 April 2023, Jackie applied in the COP also seeking to have the LPAs ruled invalid (for lack of capacity), and the revocation of the 2021 will and the “reinstatement” of the 2001 will.
17. On 29 November 2023, there was a 3 day hearing before HHJ Robin Tolson KC (to whom I will refer as “the judge” or “the COP judge”) in the COP to determine these applications (“the COP applications”) and also: (1) (2) At the hearing, all his family members accepted that Mr Thorpe did not have capacity for any material purpose. an application by the claimant against Peter for a non-molestation injunction; and the divorce proceedings between Mr Thorpe and his wife. 18. 19. In his judgment dated 18 December 2023 (at [7]), the judge identified the issues for determination in the COP applications. The only issue relating to events in 2021 was whether Mr Thorpe had capacity to execute the LPAs on 20 July 2021. The judge did not identify the validity of the 2021 will as an issue in the COP applications. It is clear from the judgment (and from the bundle index for the COP proceedings) that the judge had extensive evidence before him, including contemporaneous medical records and assessments of capacity, expert psychiatric evidence, the files of Keith Gordon & Co (the solicitors who prepared the LPAs and the 2021 will), witness statements and oral evidence.
20. The judge found (at [31] of his judgment) that Mr Thorpe did not have capacity on 20 July 2021 to execute the LPAs, setting out a range of medical and non-medical evidence in support of his conclusion. He rejected the claimant’s evidence as “flawed” and in relation to some issues “demonstrably false” and “unconvincing”. He held that Mr Thorpe’s “so-called decision making” had been precisely aligned with the claimant’s position and that this was not a coincidence: she had influenced Mr Thorpe in a manner which should not have occurred.
21. At [51] of his judgment, he said: “I must mention the position of [Mr Thorpe]’s will. The will cannot stand. No medical professional assessed [Mr Thorpe] at the time but a lucid moment for [Mr Thorpe] seems impossible on this evidence.” Croll v Estate of Margaret Mary Thorpe He indicated that the 2001 will might need updating, and that a statutory will might well need to be executed on his behalf. As noted above, Mr Thorpe died on 7 February 2024, before any further steps were taken to effect this.
22. The judge also dealt with the divorce suit, in which the issue was whether Mr Thorpe was entitled to a decree of divorce from Mrs Thorpe. His conclusion at [53] was: “I turn to the question of [Mr Thorpe]’s divorce, noting that this is in many ways a mixed question of welfare and property. First, I am not satisfied that at any point [Mr Thorpe] has wished to be

divorced from [Mrs Thorpe]. If I may borrow language from the Children Act 1989 just for a moment, he came to express wishes, or at least views, about [Mrs Thorpe] which might appear consistent with a desire for divorce, but I am unconvinced that these ever represented his inner feelings. There is currently no obvious reason why he would benefit from being divorced and a very clear downside for [Mr Thorpe] in terms of the sheer upset and indeed misery which this may well generate in the majority of his family. The proceedings are stayed. They were issued when [Mr Thorpe] had no capacity to do so. [Mrs Thorpe] does not seek a divorce and, assuming this remains the case, I will dismiss the petition.”

23. The judge’s order dated 19 December 2023 was not however limited to the issues identified in [7] of his judgment. It included the following: “AND UPON the Court declaring that the Will executed by [Mr Thorpe] in 2021 to be invalid and that consideration must be given to whether a statutory Will must now be drawn up ... IT IS DECLARED PURSUANT TO SECTION 15 OF THE MENTAL CAPACITY ACT 2005: ...
6. That [Mr Thorpe] lacked testamentary capacity to execute a Will in 2021
7. That the Will executed in 2021 is invalid.”
24. On 11 January 2024, the Official Solicitor replied to the judge’s invitation to act as Mr Thorpe’s litigation friend in the COP proceedings, declining to do so. The letter continued: “I make the following observations on behalf of the Official Solicitor, in the hope that they assist the court.
 - a. The Official Solicitor has some concern as to whether the declaration pursuant to section 15 of the Mental Capacity Act 2005 (“MCA 2005”) in the order dated 19 December 2023 that “AT lacked testamentary capacity to execute a Will in 2021” is valid. The language of section 15 of the MCA 2005 suggests that it only empowers the court to make decisions as to P’s present capacity, rather than past capacity. It is also noted that at paragraph 44 of Re M [2009] EWCOP 2525 the court quotes (apparently approvingly) a submission of Barbara Rich (counsel) Croll v Estate of Margaret Mary Thorpe stating “As she points out, the Court of Protection has no jurisdiction to rule on the validity or invalidity of any will.”
25. On 15 January 2024, the judge sent an email to the parties saying: “I have also considered the Official Solicitor’s observations on this court’s power to declare a will invalid. During argument, as I recall, the intention was not formally to rule the 2021 will invalid. In my judgment I said that it “cannot stand”. Whilst the evidence strongly suggests that this must be correct, I take the point made by the Official Solicitor. I notice that the order contains only a recital to the effect that the will is declared invalid. I believe the most appropriate course is now to remove that recital.” 26. It would seem however that the judge did not take any steps to formally amend his order. The evidence before me includes an email dated 29 October 2025 sent on behalf of the judge, setting out that he has been asked by various applications and emails to: “1. Remove references in the order dated 29 (sic) December 2023 to the invalidity of [Mr Thorpe]’s will; Remove certain paragraphs within my judgment dated

19 December 2023” 2.

27. The judge declined to do so on the grounds that he was functus officio i.e. that his role in the COP proceedings was over.
28. The claimant’s application for permission to appeal the judge’s order was refused on 11 April 2024. In refusing permission, Williams J stated at [5]: “The decisions reached by the judge are clearly based on a careful evaluation of a wide range and variety of evidence including that of experts, medical professionals, lawyers and the parties as well as documentary and video material.” Basis of the application
29. The basis of the defendants’ application is set out in their application notice, which relies on CPR 3.4(2)(b) and Part 24, and supplemented by the defendants’ witness statements. It can be summarised as being that the claim is unsustainable to the extent that it seeks to advance allegations, issues or contentious material materially inconsistent with the final judgments and orders made in the COP claim. Legal principles Striking out
30. CPR 3.4(2) provides, so far as relevant: Croll v Estate of Margaret Mary Thorpe “3.4— Power to strike out a statement of case
- (2) The court may strike out a statement of case if it appears to the court— ... (b) likely to obstruct the just disposal of the proceedings;” that the statement of case is an abuse of the court’s process or is otherwise 31. In addition, the court has an inherent jurisdiction to strike out any documents or to strike out, dismiss or stay any proceedings which amount to an abuse of the court’s process: see para 3.4.5, 2026 Civil Procedure.
32. One form of abuse is where a party seeks to litigate issues which have been already decided by a court of competent jurisdiction, or in certain circumstances, should have been raised in earlier proceedings. The present law was summarised by Lord Sumption JSC in Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd [2013] UKSC 46 [2014] A. C. 160, at [22]: “Arnold v National Westminster Bank plc [1991] 2 AC 93 is accordingly authority for the following propositions.
- (1) Cause of action estoppel is absolute in relation to all points which had to be and were decided in order to establish the existence or non-existence of a cause of action.
- (2) Cause of action estoppel also bars the raising in subsequent proceedings of points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised.
- (3) Except in special circumstances where this would cause injustice, issue were not raised in the earlier proceedings or estoppel bars the raising in subsequent proceedings of points which (i) (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised.”

33. However, these principles only apply where the parties to the subsequent proceedings were parties to the earlier proceedings. Judgments are only conclusive as to the issues decided as between the parties and their privies (persons treated as having the same legal interest). As explained in the authoritative textbook, Phipson on Evidence (20th edn) at 43-77: “At common law a judgment in personam (whether delivered in civil or criminal proceedings) is no evidence of the truth either of the decision or of its grounds (whether findings of fact or the legal consequences of those findings), between strangers, or a party and a stranger.”
Summary judgment
34. CPR 24.2 provides, so far as relevant: Croll v Estate of Margaret Mary Thorpe “The court may give summary judgment against a claimant ... on the whole of a claim or on a particular issue if – (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and there is no other compelling reason why the case or issue should be disposed of at a trial.” (b)
35. The principles to be applied on applications for summary judgment are well established. They were summarised by Lewison J, as he then was, in Easyair Ltd v Opal Telecom Limited [2009] EWHC 339 (Ch). Since the parties are unrepresented, I set them out:
- (1) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: Swain v Hillman [2001] 2 All ER 91 ;
- (1) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED & F Man Liquid Products v Patel
[2003] EWCA Civ 472 at [8]; In reaching its conclusion the court must not conduct a “mini-trial”: Swain v Hillman; (2)
- (3) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel at [10]
- (4) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550 ;
- (5) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd

[2007] FSR 63 ;

- (6) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before *Croll v Estate of Margaret Mary Thorpe* the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.
36. The burden of proof is on the applicant to show that the conditions in CPR 24.2 are satisfied. Jurisdiction of the Court of Protection 37. Section 15 of the Mental Capacity Act 2005 provides: "15 Power to make declarations
- (1) The court may make declarations as to—
- (a) whether a person has or lacks capacity to make a decision specified in the declaration;
- (b) whether a person has or lacks capacity to make decisions on such (c) matters as are described in the declaration; the lawfulness or otherwise of any act done, or yet to be done, in relation to that person. (2) "Act" includes an omission and a course of conduct."
38. The wording of the section clearly, in my judgment, limits the scope of the declarations pursuant to it to the relevant person's capacity at the date of the declaration. It does not extend to declarations as to past capacity. The decision referred to in the Official Solicitor's letter dated 11 January 2024 – *Re M (Statutory Will)* [2009] EWHC 2525 (Fam), [2011] 1 W. L. R. 344 – records at [44(i)] the judge's endorsement that the Court of Protection has no jurisdiction to rule on the validity or invalidity of any will. The judge, then Munby J, was later appointed to the Court of Appeal, and then became President of the Family Division. His endorsement, although not strictly necessary for the purpose of deciding the case before him, is to be treated as highly persuasive. In any event, the claimant has a real prospect of success in showing that the COP's jurisdiction is limited in this way. Time when a will takes effect 39. For present purposes, the time when a will takes effect is sufficiently set out in the authoritative textbook, *Williams, Mortimer & Sunnucks* (22nd edn) at 10-02: "A will is an instrument by which a person makes a disposition of their property to take effect after their death and which is in its own nature ambulatory and revocable during their life. Thus, until the death of the testator, a will has no effect and is a mere declaration of the testator's

intentions, which may be subject to change. A beneficiary under a will has no interest in the estate during the testator's lifetime." Croll v Estate of Margaret Mary Thorpe Discussion and conclusions 40. In my judgment, the COP judge's decision cannot give rise to an issue estoppel binding Mrs Thorpe's estate.

41. Mrs Thorpe was not a party to the COP applications. The factual findings of the COP judge in relation to those applications do not therefore bind the claimant in a claim as against Mrs Thorpe, or the defendants, who stand in her shoes in their representative capacity as her executors; nor are they admissible as evidence in this claim. 42. In any event, in making declarations in his order in respect of Mr Thorpe's testamentary capacity in 2021 and the validity of the 2021 will, the judge, in my judgment, lacked jurisdiction to do so for two reasons. First, (as the judge himself acknowledged) he had no jurisdiction under section 15 of the 2005 Act to make declarations as to capacity in the past. Secondly, and additionally, at the date of his decision, Mr Thorpe was still alive. The 2021 will had not yet taken effect and remained revocable. Issues as to the validity of the will as an effective testamentary disposition had therefore not yet crystallised; and, when they did, would be properly determinable in a probate claim, not in the COP. Whilst this lack of jurisdiction may not affect the position as between the parties to the COP proceedings, it is at least arguable with a real prospect of success that it prevents an issue estoppel from arising.
43. The COP judge's decision was not confined to the COP applications. He also sat as a judge in the Reading Family Court to hear the divorce petition brought by Mr Thorpe. However, the claimant was not a party to the divorce proceedings, so, similarly, they cannot give rise to an issue estoppel, nor are the judge's factual findings admissible as evidence in this claim. 44. It follows that the defendants' application must be dismissed. This does not mean that they will not ultimately be successful in defending the claim. On the contrary, whilst I have not reviewed in detail the evidence before the COP, or the evidence now relied upon by the claimant as showing that Mr Thorpe had capacity to make the 2021 will, the comments of Williams J (set out at paragraph 28 above) are a strong indication of the likely outcome of this claim. 10

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