

SUPREME COURT OF QUEENSLAND

CITATION: *Re Gawley (deceased)* [2018] QSC 242

PARTIES: **In The Wills of Betty Gawley (deceased)**

FILE NO/S: SC No 361 of 2018

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 17 October 2018 – Ex Tempore

DELIVERED AT: Cairns

HEARING DATE: 17 October 2018

JUDGES: Henry J

ORDER:

- 1. A Grant of Probate of the wills of Betty Gawley, as contained in the copy dated 8 June 2017, and marked A by me and initialled by me, be granted to Marilyn Jeanette Cash as sole executor.**
- 2. This Order is otherwise subject to the formal requirements of the Registrar.**
- 3. That the Applicant’s costs of and incidental of the application be paid on the indemnity basis from the estate of the deceased.**

CATCHWORDS: SUCCESSION – WILLS, PROBATE AND ADMINISTRATION – THE MAKING OF A WILL – TESTAMENTARY INSTRUMENTS – WHERE SEVERAL INSTRUMENTS– GRANT OF SINGLE PROBATE – where three wills of identical content were executed contemporaneously – where there was no revocation clause – whether probate of one or more should be granted – whether the Registrar may select and identify one with a mark for the purpose of the grant of probate.

Townsend v Moore [1905] P66, 83, considered.

COUNSEL: Nil for the applicant
Nil for the respondent

SOLICITORS: Jeneve Frizzo Estate Law for the applicant
No appearance for the respondent

- [1] The late Betty Gawley executed her last will on 8 June 2017. In point of fact, on that date she executed three such wills of identical content. Those acts, doubtless calculated at providing multiple copies of the same document for the convenience of others, have ironically given rise to inconvenience. The executor's application for a grant of probate has necessarily found its way before me because of evident doubt as to which of the three identical wills was executed last.
- [2] There exists a body of authority dealing with the dilemma which arises when multiple identical wills are executed on the same occasion, and contain a clause revoking previous wills. Those authorities suggest that where the sequence in which the identical wills were executed is no longer ascertainable, the proper course is to admit each of them to probate, see, for example, *Townsend v Moore* [1905] P66, 83.
- [3] In the present case, the identically and contemporaneously executed wills contained no revocation clause. There is thus neither a temporal inconsistency or content inconsistency between them. Where a final will in a series of wills is executed without a revocation clause, its content may sometimes be inconsistent with a preceding validly executed will. Where that occurs, it appears from the authorities discussed in *Townsend v Moore*, that the final will is regarded as impliedly revoking any such content of the preceding validly executed will as may be inconsistent with the final will.
- [4] That situation does not pertain here. In my view, where an application for a grant of probate involves multiple identical wills which contain no revocation clause but deal with the entire estate, and have been executed contemporaneously, it would be proper for a Registrar to simply select and place an identifying mark upon one of those for the purposes of the grant.
- [5] Against this background, I conclude it is unnecessary to admit the multiple documents of the will executed on 8 June 2017 and instead I shall simply admit one of those executed documents. I have marked one of those documents with the letter A, initialling it and now order a grant of probate of that will be granted to the executor.
- [6] I order as per the amended draft order, signed by me and placed with the papers.