# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Re Weedon (deceased)* [2020] QSC 161 |
| PARTIES: | **DEREK EOIN COSS**<br>(applicant) |
| FILE NO/S: | SC No 126 of 2020 |
| DIVISION: | Trial Division |
| PROCEEDING: | Application |
| ORIGINATING COURT: | Supreme Court at Cairns |
| DELIVERED EX TEMPORE ON: | 25 March 2020; 29 April 2020 |
| DELIVERED AT: | Cairns |
| HEARING DATE: | 24 March 2020 (on the papers); 29 April 2020 |
| JUDGE: | Henry J |
| ORDER: | **On 25 March 2020:** |

1. **Application adjourned to 9.15 am, 29 April 2020, with any interested parties having leave to attend and be heard by telephone or audio-visual link.**

2. **The applicant will, in the meantime, cause affidavit evidence to be filed, evidencing:**
   a. **steps taken to locate the deceased's daughters, and, if the daughters have been located;**
   b. **steps taken to notify them of the application and their right to attend and be heard at 9.15 am, 29 April 2020.**

3. **The Registrar will forward a copy of the transcript of today's proceeding to the applicant's solicitor.**

4. **Costs reserved.**

**On 29 April 2020:**

1. **It is declared the document dated 19 April 2013 prepared by Barry Francis Weedon forms a Will of the deceased.**

2. **Subject to the formal requirements of the Registrar, a grant of letters of administration with the Will dated 19 April 2013 of Barry Francis Weedon be made to Derek Eoin Coss as**

**administrator; and**

3. **The applicant's costs of and incidental to this application be paid from the estate of the deceased on the indemnity basis.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – SERVICE – OTHER MATTERS – where the applicant seeks an order that an informally executed document be declared to form the will of the deceased per s 18 *Succession Act 1981* (Qld) – where the purported will leaves a nominal amount of $2 to the deceased's daughters – where there is no evidence that the deceased's daughters had been served or had notice of the application – where the *Uniform Civil Procedure Rules 1999* (Qld) do not prescribe the giving or serving of notice upon persons with a beneficial interest in a deceased's estate in these precise circumstances – whether it is prudent to make the orders sought in the absence of service or notice

*Succession Act* 1981 (Qld), s 18
*Uniform Civil Procedure Rules* 1999 (Qld) r 598, r 599, r 633

COUNSEL: K Wood (sol) for the applicant

SOLICITORS: Maurice Blackburn for the applicant

[The matter first came before his Honour on 25 March 2020. The matter was heard on the papers. His Honour delivered the following *ex tempore* reasons].

**HIS HONOUR**: The deceased died on the 6th of November 2019. His purported will of 19 April 2013 was found in his filing cabinet at home amongst his personal papers. It is headed "My Last Will 19/April/2013". On that date, he evidently signed it, and it was witnessed by a Justice of the Peace, whose stamp was endorsed upon the document, the original of which is on the Court file. There is no evidence as to the existence of other wills made before or after then.

The purported will's substantial beneficiary is the deceased's niece, Miranda Coss. Her husband, Derek, was named in the document as executor and trustee. He applies for orders invoking a finding under section 18 of the *Succession Act 1981* (Qld) and consequential orders, the practical effect of which would give formal force as a will to the aforementioned document.

The application of section 18 in the present circumstances requires satisfaction that the deceased intended the document to form his will. The facts appear to compel such satisfaction. The document in itself bears the characteristics of a document which the deceased intended to execute as his will, in that he went to the trouble of procuring a Justice of the Peace to witness it. That bespeaks an obvious lay intention that the document ought be acted upon with the force of what a layperson might call an "official document".

The dispositive content of the will also bespeaks an intention that it be the deceased's will. He was evidently estranged from his two daughters for many years after an acrimonious divorce, whereas he was close to his niece. Indeed, Ms Coss cared for him in his twilight years. His purported will left his daughters $2 each, and actually mentioned in explanation of it that they "have not bothered to contact me ... despite all my efforts to contact them". The affidavit material explains of the $2 dispositions that the deceased somehow believed by leaving such nominal amounts, as distinct from leaving nothing to his daughters, his will would be less vulnerable to challenge. In any event, the present significance of that aspect is that it evidences a clearly explained testamentary intention consistent with him intending the document be his will.

Other features supporting such a conclusion include the leaving of family history documents, including photographs, to his brother should he have survived the deceased, and the giving of directions regarding his funeral and remains. While the giving of such directions are not dispositive, they are consistent with the deceased intending the document to be the will which would be acted upon when he died. There is no suggestion of any want of testamentary capacity or other circumstance raising doubt regarding the force which should be accorded to the purported will.

For all of those reasons, I would, in the ordinary course, have no hesitation in holding the satisfaction required of me by section 18, and thus making the consequential orders sought. However, there is no evidence before me of any steps taken to locate and notify the deceased's daughters of this application. Evidence of that kind is commonly included in applications of the present kind.

I acknowledge the requirements in rr 598 and 599 *Uniform Civil Procedure Rules 1999* (Qld) ("the Rules") for general notice of intention to apply for a grant have been complied with. However, this application for a grant included an application for an order pursuant to section 18, making it inevitable it needed to be brought before me for me to exercise my own discretion and decision making. This took it beyond a mere formal process through the Registry.

The Rules do not prescribe the giving or serving of notice upon persons with a beneficial interest in a deceased's estate in these precise circumstances. Rule 633 requires such notice in a "claim" in which a Court is asked to pronounce for or against the validity of a will. I am, in effect, being asked to do just that, but it is not in the context of a "claim". Despite the Rules not mandating notification of the deceased's daughters in the present circumstances, prudence dictates such notification in a case where I am being asked to conclude a document forms a will leaving but $2 each to the deceased's daughters, whose relative share of the estate, were it to fall on an intestacy basis, would be much, much greater.

That course is prudent, in my view, notwithstanding the apparent force otherwise of the application. It may, of course, be the deceased's daughters recognise the force of the application and do not seek to participate in the application or be heard in respect of it. Indeed, they may hold other reasons why they have no interest in the proceeding. But for the reasons I have explained, given the nature of the decision and its consequences, a proper attempt should at least be made to locate and notify them of the application.

My orders are:

1. Application adjourned to 9.15 am, 29 April 2020, with any interested parties having leave to attend and be heard by telephone or audio-visual link.

2. The applicant will, in the meantime, cause affidavit evidence to be filed, evidencing:
    a. steps taken to locate the deceased's daughters, and, if the daughters have been located;
    b. steps taken to notify them of the application and their right to attend and be heard at 9.15 am, 29 April 2020.

3. The Registrar will forward a copy of the transcript of today's proceeding to the applicant's solicitor.

4. Costs reserved.

Adjourn the court.

[The matter came before his Honour once again on 29 April 2020. His Honour delivered the following *ex tempore* reasons].

**HIS HONOUR**: I gave my reasons in this matter on 25 March 2020 as to why, but for one qualification, I would grant the application made. That qualification was my order that the deceased's two daughters be located and notified of the application and of their right to attend today. That has occurred. One of them has indicated through her solicitor that she does not intend to participate in this application.

No response has been received by the other daughter, Aurora, though I am quite confident, on the basis of the materials before me, which include not only physical service of materials upon her address but also an email to an email address provided by her sister, that she is well-aware of today's proceeding and has evidently elected not to participate either.

In those circumstances, for the reasons already given, I order as per the amended draft order signed by me and placed with the papers.