

# SUPREME COURT OF QUEENSLAND

CITATION: *Re: Gurney (deceased)* [2015] QSC 305

PARTIES: **MICHAEL JOHN GURNEY**  
(first applicant)  
**WAYNE STEPHEN GURNEY**  
(second applicant)  
**IAN PHILIP GURNEY**  
(third applicant)  
**NEAL SCOTT GURNEY**  
(fourth applicant)

FILE NO/S: Brisbane No 10339 of 2015

DIVISION: Trial Division

PROCEEDING: Application on the papers

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 29 October 2015

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGE: Boddice J

ORDER: **1. A grant of probate of the copy of the Will of the deceased dated 23 October 2009 be granted to Michael John Gurney, Wayne Stephen Gurney, Ian Philip Gurney and Neal Scott Gurney as executors.**

CATCHWORDS: SUCCESSION – PROBATE AND LETTERS OF ADMINISTRATION – GRANTS OF PROBATE AND LETTERS OF ADMINISTRATION – TO WHOM PROBATE GRANTED – where the applicants applied for orders that a grant of probate for a copy of the deceased’s Will be granted to them as Executors – where the original Will cannot be located – whether the orders for a grant of probate sought by the applicants should be granted

COUNSEL: No appearance by the applicant, the applicant’s submissions were heard on the papers  
No appearance by the respondent, the respondent’s submissions were heard on the papers

SOLICITORS: No appearance by the applicant, the applicant’s submissions were heard on the papers  
No appearance by the respondent, the respondent’s submissions were heard on the papers

- [1] By application, filed 15 October 2015, the applicants applied to the Court for orders that a Grant of Probate for the copy of the Will of the Deceased dated 23 October 2009 be granted to them as Executors. The applicants propose that the application be decided without an oral hearing.
- [2] The deceased died on 12 November 2011. He had been separated from his wife for many years. The applicants are his children.
- [3] The affidavit material filed in support of the application establishes that the Deceased signed a Will on 23 October 2009. His signature was witnessed by two colleagues, who were in the presence of the Deceased when he signed that Will.
- [4] The original Will was then kept by a colleague for safe-keeping. After the death of the Deceased, what was believed to be the original Will was sent to the solicitors for the applicants. Those solicitors discovered that the document was not the original but a “very good copy”. Despite enquiries, the applicants have not been able to locate the original.
- [5] The material also establishes that the copy in question is a true copy of the last Will and Testament of the Deceased. It establishes the original Will was signed in accordance with the requirements for a valid Will. There is an explanation for the lack of an original of that Will.
- [6] The application is supported by the wife of the Deceased and the Deceased’s sons. These sons are the residuary beneficiaries.
- [7] I am satisfied that the application is properly to be determined without an oral hearing. I am also satisfied it is appropriate a Grant of Probate of the copy of the Will of the Deceased dated 23 October 2009 be made.
- [8] I make orders in terms of the draft, which I initial and place with the papers.