

# SUPREME COURT OF QUEENSLAND

CITATION: *Re: Tinker (d'ced)* [2016] QSC 217  
PARTIES: **IN THE WILL of SAMANTHA TINKER deceased**  
FILE NO: BS3543/16  
DIVISION: Trial Division  
PROCEEDING: Application without an oral hearing  
DELIVERED ON: 21 September 2016  
DELIVERED AT: Brisbane  
HEARING DATE: 21 September 2016 on the papers  
JUDGE: Jackson J  
ORDER: **The order of the court is that:**

- 1. That the document that was not executed under Pt 2 of the *Succession Act 1981 (Qld)* forms the will of the deceased under s 18.**
- 2. Probate of the will be granted to the applicant as executor.**

CATCHWORDS: SUCCESSION – MAKING OF A WILL – EXECUTION – INFORMAL DOCUMENT INTENDED TO BE WILL – GENERALLY – whether a document entitled “My Last Will and Testament...” handwritten on an unknown date prior to the deceased’s suicide formed a will

*Succession Act 1981 (Qld)*, s 18

SOLICITORS: Welsh & Welsh Solicitors for the applicant

- [1] **Jackson J:** There are two relevant applications. The originating application is for proof of an informal will made on or about 6 August 2015. The second application is for a declaration under s 18 of the *Succession Act 1981 (Qld)* that the relevant document (“informal will”) form a will of the deceased.
- [2] On 6 August 2015, the deceased died by suicide. She was 43 years of age.
- [3] From 2002 until her death, the deceased lived with her parents.
- [4] She had no children and was divorced.
- [5] On 22 July 1999, the deceased executed a will whilst serving in the Royal Australian Navy (“prior will”).
- [6] The prior will appointed her parents as executors and left all her estate to them to distribute as they saw fit, with a gift over to her brother if they predeceased her.

- [7] The informal will appoints her brother, the applicant, as executor. It gives the money in her bank accounts and her car to her brother, the money from her superannuation to her parents and directs her brother to liaise with other members of her family regarding other items.
- [8] The informal will is handwritten and was executed by the deceased but not witnessed. It is headed “My Last Will and Testament for Samantha Tinker”. It formed page 2 of a document which on the evidence seems to have begun as a letter addressed to her family, written in contemplation of suicide.
- [9] However, part of the document preceding the section headed “My Last Will and Testament for Samantha Tinker” possibly dealt with or also evidenced her testamentary intentions as follows:

“I have money in my cheque account – PIN 1504.

In my Term deposit account there is \$20,000.

I also have a Super Saver Account that has about \$4,900.

I have left my bank details in the pink file with this letter.

I give my full permission that all of this money [is] to go to my nephew Oliver Joseph Tinker and my niece Finella Dulce Tinker.

My car is to go to my brother Richard George Tinker and sister-in-law Michelle Leanne Tinker.”

- [10] On the face of it, the permission could be inconsistent with par 1 of the section of the document headed “My Last Will and Testament for Samantha Tinker” on page 2. That paragraph provides:

“I wish for my money in the Commonwealth Bank to go to my Brother: Richard George Tinker. My account details are in the pink folder that is with these letters. My Netbank details are No [number deleted] Password [password deleted]”

- [11] The question under s 18 is whether the informal will forms a will. Section 18 provides, in part:

- (1) This section applies to a document, or a part of a document, that—
- (a) purports to state the testamentary intentions of a deceased person; and
  - (b) has not been executed under this part.
- (2) The document or the part forms a will, an alteration of a will, or a full or partial revocation of a will, of the deceased person if the court is satisfied that the person intended the document or part to form the person’s will, an alteration to the person’s will or a full or partial revocation of the person’s will...

- [12] I am satisfied that the deceased intended the document to form her will and thereby to fully revoke her prior will.
- [13] That conclusion is specifically supported by the deceased's parents. An affidavit of her father proves that it was he who found the informal will shortly after the deceased's death. The affidavits of both parents prove that they believe the document was intended by the deceased to be her will and that they are happy for her estate to be administered by the applicant in terms of the informal will.
- [14] I note that the deceased's parents were not only the beneficiaries of her estate under her prior will but also would be sole beneficiaries if her estate were administered in intestacy.
- [15] The remaining question is the effect of the deceased's statement that she gave "full permission" for the money standing to her bank accounts to go to her nephew and niece as opposed to the gift in par 1 of the informal will that it go to her brother.
- [16] In my view, reading the sections of the document together leads to the conclusion that the testamentary disposition is the one made by the deceased in par 1 of the informal will. The statement on the prior page that the deceased gave full permission that the money go to her niece and nephew is to be construed as a wish but not a disposition.
- [17] I have considered whether someone should have been appointed to represent the interests of the niece and nephew independently before I reached that conclusion. However, given the likely small amount of the value of the bank accounts, in my view, it would be inappropriate to do so.
- [18] Accordingly, I order that the informal will forms the will of the deceased and that the probate of the will be granted to the applicant as executor.