

# SUPREME COURT OF QUEENSLAND

CITATION: *In the will of Andrew Charles Pearce* [2012] QSC 199

PARTIES: **IN THE WILL OF ANDREW CHARLES PEARCE  
ALSO KNOWN AS ANDREW PEARCE DECEASED**

FILE NO/S: 668 of 2012

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 2 August 2012

DELIVERED AT: Brisbane

HEARING DATES: 3 May 2012, 12 June 2012, 30 July 2012

JUDGE: Dalton J

ORDER: **1. Declare that the handwritten alterations on the will dated 19 August 2006 and the document dated 4 February 2007 attached to that will are valid alterations to the will dated 19 August 2006.**

**2. Subject to the formal requirements of the Registrar, order a grant of probate be made to Scott Andrew Langdon Pearce attaching the will dated 19 August 2006 (with handwritten alterations) and the document dated 4 February 2007 which are, together, Court Document 3.**

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

CATCHWORDS: AMENDMENTS AND ALTERATIONS TO WILL;  
INFORMAL DOCUMENTS ADMITTED TO PROBATE

*Succession Act 1981 (Qld)*

*Hatsatouris v Hatsatouris* [2001] NSWCA 408

COUNSEL: Mr D Morgan for the applicant  
Mr D Pearce in person on 30 July 2012

SOLICITORS: Ramsden Lawyers for the applicant

- [1] This is an application to have informal documents admitted to probate as altering the will of Andrew Charles Pearce pursuant to s 18 of the *Succession Act* 1981 (Qld). The application is not opposed. On the initial hearing of the application, no one appeared on the application except lawyers acting for the executor, Mr Scott Pearce. These lawyers also announced that they appeared for Mr Scott Pearce's brother, Mr Daniel Pearce. I reserved my decision after argument. I relisted the matter on two occasions because I wished to be satisfied that Mr Daniel Pearce was given an opportunity to be heard on the application, separately to his brother. As will appear from the facts recorded below, the circumstances were such that I could not be confident that the same lawyers could appear for both brothers. In the end, Mr Daniel Pearce appeared before me in person, having been served with the application. He did not oppose the relief sought. As well, I am satisfied that all other interested parties were either served with, or had notice of, the application.
- [2] The deceased is recorded on the death certificate to have died between 1 and 2 June 2011. He was predeceased by his wife Mary Patricia Pearce known as Trisha Pearce. She died on 25 December 2010.
- [3] By a document headed "Trisha and Andrew Pearce" and marked, "Saturday, August 19<sup>th</sup>, 2006", it appears that the deceased and his wife made a homemade will. The words of the document say, "As we are about to travel overseas we wish to make the following amendments to our wills." However, there is no evidence of any earlier wills, and the provisions of the homemade document do not seem to refer to any earlier document, but stand alone as a disposition of all the property of both the deceased and his wife. Two signatures appear above the names Trisha Pearce and Andrew Pearce and two signatures appear underneath this, opposite the words, "witnessed by:".
- [4] There is an affidavit from one of the witnesses who identifies her signature and says that the deceased signed the homemade will in her presence and in the presence of the other witness, and that she and the other witness signed the will in the presence of the deceased and each other. She identifies the deceased's signature on the will. She says that there were no corrections or alterations appearing on the will that she witnessed. The second witness swears an affidavit in identical terms.
- [5] There are now two handwritten alterations on the document bearing the date 19 August 2006. They are both to strike out the name of one of the deceased's sons, Daniel. Against each striking out there appear two signatures similar to the signatures above the typewritten names Trisha Pearce and Andrew Pearce at the foot of the document. Near each of the amendments is the date, "4/02/07". Against each of the crossings out are the words, "see amendment attached".
- [6] There is an affidavit of plight and condition to the effect that the original document bearing the date 19 August 2006 was found stapled to another similar document headed, "Trisha and Andrew Pearce" and bearing the typewritten date Sunday 4 February 2007. That document appears identical in its substance and form to the document which bears the date 19 August 2006 except that, at the place of the first striking out on the 2006 document, Scott Pearce's name is substituted, and at the place of the second striking out Daniel Pearce's name is simply omitted. From the identical peculiarities in typing, the 2007 document appears to be a printout of the same word processor document as the 2006 document with those two alterations. At the foot of the 2007 document there are signatures above the names Trisha

Pearce and Andrew Pearce. There are spaces for two signatures opposite the words, “witnessed by:”, but these are blank.

- [7] There is evidence to the effect that in December 2006 Daniel Pearce fell out with his father over business affairs.
  
- [8] On the day it was executed, the 2006 document complied with s 10 of the *Succession Act* 1981 so that it was a will. Section 16 of the *Succession Act* provides that an alteration to a will after it has been executed is not effective unless the alteration is executed in the way a will is required to be executed – s 16(1). Section 16(3) provides that if a will is altered, it is sufficient for the execution of the alteration if the signature of the testator and the witnesses to the alteration are made in the margin near the alteration. The alterations to the 2006 document do not comply with the requirements of ss 10 and 12 of the *Succession Act* nor does the 2007 document. Neither the amendments to the 2006 document, nor the 2007 document, are witnessed at all.
  
- [9] The applicant relies on s 18 of the *Succession Act* which provides as follows:
  - “**18 Court may dispense with execution requirements for will, alteration or revocation**
  - (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.
  - (3) In making a decision under subsection (2), the court may, in addition to the document or part, have regard to–
    - (a) any evidence relating to the way in which the document or part was executed; and
    - (b) any evidence of the person’s testamentary intentions, including evidence of statements made by the person.
  - (4) Subsection (3) does not limit the matters a court may have regard to in making a decision under subsection (2).
  - (5) This section applies to a document, or a part of a document, whether the document came into existence within or outside the State.”
  
- [10] I think the correct starting point is that the 2006 document is a will and I should look to s 18 of the *Succession Act* to determine whether or not the alterations made in 2007, by writing on the 2006 document and appending to it an unwitnessed new version of the original will, together constitute a valid alteration to the 2006 will. Clearly enough there is a document, in fact there are two documents, which contain

irregular alterations to the will. In my view, I can be satisfied that the documents containing the irregular alterations purported to embody the deceased's testamentary intentions and that the deceased, at the time he made the handwritten alterations to the 2006 document, and stapled the 2007 document to the 2006 document, intended that the documents containing the alterations would operate as alterations to his will.<sup>1</sup> I base these findings on the fact that the handwritten alterations are to the deceased's will, which apart from these alterations is a validly executed will, and the fact that the 2007 document was stapled to the 2006 will.

- [11] Accordingly I declare that the handwritten amendments to the 19 August 2006 will and the document dated 4 February 2007 are valid alterations to the 19 August 2006 will and order that subject to the formal requirements of the Registrar, a grant of probate be made to Scott Andrew Langdon Pearce attaching the will dated 19 August 2006 (with handwritten alterations) and the document dated 4 February 2007 which are, together, Court Document 3.
- [12] I further order that the applicant's costs of and incidental to the application be paid from the estate on an indemnity basis.

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<sup>1</sup> See the general approach in *Hatsatouris v Hatsatouris* [2001] NSWCA 408, [56].