SUPREME COURT OF QUEENSLAND

CITATION:	*Re K* [2014] QSC 94
PARTIES:	**K**
	(Applicant)
FILE NO/S:	SC No 3380 of 2014
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	1 May 2014
DELIVERED AT:	Brisbane
HEARING DATE:	1 May 2014
JUDGE:	Atkinson J
ORDERS:	**1. The applicant is authorised to make the proposed will.**
CATCHWORDS:	SUCCESSION – MAKING OF A WILL – TESTAMENTARY CAPACITY – MINORS – where the applicant is a minor – where the applicant's personal injury claim is expected to settle for a significant award of damages – where the applicant's mother has been his sole carer – where the disposition of the applicant's estate would not match his testamentary wishes were he to die intestate – where the applicant understands the nature and effect of the proposed will – where the applicant the extent of any property disposed of under the proposed will – where the proposed will reflects the applicant's intentions – whether it is it is reasonable in all the circumstances that the proposed will be made – whether the court approves the proposed will - whether the court should authorise the applicant to make the proposed will.
	Succession Act 1981 (Qld), s 19
COUNSEL:	R D Williams for the applicant
	No appearance for the respondent
SOLICITORS:	Broadley Rees Hogan Lawyers for the applicant
	No appearance for the respondent

HER HONOUR: An originating application has been filed for an order to be made pursuant to s19 of the *Succession Act 1981*, authorising a minor, who I will refer to in this judgment as "K", to make a will in terms that are contained in an exhibit to an affidavit sworn by him.

K is a minor, as he is 16 years old. 12 years ago, when he was only 4 years old, he suffered very serious personal injuries in a motor vehicle accident. I have a medical report before me which sets out the extent of those injuries. The applicant's litigation guardian is a solicitor who has been acting for him with regard to the litigation following that personal injury. It is expected that the claim will settle before K reaches 18 years of age for a significant award of damages, given the extent of his injuries.

K has been examined by an experienced child psychiatrist, Dr John Varghese, who interviewed him and his mother individually for a period of four hours. Dr Varghese is able to report that K articulated clearly that he understood what a will was and its utility and effect, and what he would like to do with the money which he will receive, in terms of his testamentary intentions, were he to die. He is, however, unable to make a will, because he is a minor.

I am satisfied from the material before me that, were he to die intestate, the disposition of his estate would not match his testamentary wishes. His mother has been his carer ever since he was released from hospital, having suffered these terrible injuries. He lives with her and she has been his sole carer. He has had virtually nothing to do with his father and has no relationship with him. In the circumstances, he is of the strong view, which is entirely understandable, that it is his mother who deserves to inherit from him should he predecease her.

K has thought about what should happen if his mother were to predecease him, and his desire, quite rationally, is that his assets should be divided equally between his siblings, two step-siblings and sister, in equal amounts. If any of his siblings predecease him, then he wishes the share of that sibling to go to that sibling's children. He has also thought through what should happen to his estate should all of those people predecease him, and that is that his estate should be divided equally between two charitable institutions which are particularly relevant to him, given the injuries that he has suffered.

I am asked, therefore, to make an order authorising K to make a will in those terms. A draft of that will is exhibited to his affidavit, and fulfils all of his rational desires to benefit those close to him in the way in which I have set out. Section 19 (3) of the *Succession Act 1981* provides that the Court may only make such an order if the Court:

a) is satisfied that the minor understands the nature and effect of the proposed will, and the extent of any property disposed of under the proposed will;
b) is satisfied that the proposed will accurately reflects the intentions of the minor;
c) is satisfied that it is reasonable in all the circumstances that the order be made; and
d) has approved the proposed will.

For the reasons I have already set out, I am satisfied, particularly from the report of Dr John Varghese and K's own affidavit, as well as the information given by him orally to me from the bar table, that he understands the nature and effect of the proposed will. I am also satisfied from the information provided by his solicitor that he understands what he would have to do in order to change his will should his circumstances or wishes change once he reaches the age of 18, and that he understands the extent of property disposed of under the proposed will.

For the reasons already given, I am satisfied that the proposed will accurately reflects his intentions, and that it is reasonable in all the circumstances for an order to be made by me authorising him to make a will that reflects those intentions.

The only other matter to mention is that the executor to be appointed under the proposed will is the Public Trustee, who has consented to that appointment.

This is an example of precisely the kind of case in which it is beneficial for the Court to be able to authorise a minor, who would not otherwise be able to to do so, to make a will, so that his estate does not suffer the consequences which would follow if he were to die intestate.

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