

SUPREME COURT OF QUEENSLAND

CITATION: *In the Will of Steven Bruce Gray* [2024] QSC 7

PARTIES: **IN THE WILL OF STEVEN BRUCE GRAY**

Virgenia May Gray as Executor of the Will of Steven Bruce Gray
(applicant)

FILE NO: BS 13336 of 2023

DIVISION: Trial Division

PROCEEDING: Application on the papers

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 12 January 2024

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Sullivan J

ORDER: **A grant of probate of the Will of Steven Bruce Gray as contained in a copy thereof dated 5 April 2004 be granted to VIRGENIA MAY GRAY as sole executor thereof, limited until the original Will or more authenticated evidence thereof be brought into and left in the registry of this Court. This order is subject to the formal requirements of the Registrar.**

SOLICITORS: John Woulfe Solicitors

- [1] The applicant, Virgenia May Gray, has brought an application on the papers for a grant of probate of a copy of the will of Steven Bruce Gray (“the deceased”), dated 5 April 2004.

Facts

- [2] The deceased made a will on 5 April 2004.
- [3] The deceased passed away on 30 October 2022. The applicant was the wife of the deceased.

- [4] On 3 March 2023, the applicant collected the original will from the safe custody of John Woulfe Solicitors from their premises at Ashmore. The applicant deposes that she had collected certain documents (including the original will) because she was going to see her accountant and Centrelink to attend to various requirements following the deceased's death. The applicant had thought that the original will may need to be sighted by those entities.
- [5] When the applicant was subsequently requested to return the original will to the solicitor's office so that it could be lodged with her application for probate, she attempted to locate the original will with no success.
- [6] There were attempts made to locate the original.
- [7] First, on 13 September 2023, she attended Ashmore Plaza Newsagency to check whether she had inadvertently left the will at that shop, as she recalled she had used the photocopier on a previous occasion to make copies of the original will. The applicant was informed by a staff member that the will was not there, and if a document had been left behind by a customer it would have been kept for a week before being thrown out. The applicant was further informed that the newsagency did not look through any document left behind for the purpose of seeing if there was an address.
- [8] Secondly, the applicant carried out a thorough search of all records and documents stored at her house.
- [9] The applicant deposes that she had undertaken a cleanout of her late husband's personal items and records and then disposed of them. The applicant deposed that she was concerned that during that process she may have accidentally thrown out the original will.
- [10] The applicant undertakes to deliver the original will should it be found or ever come into her possession. The applicant deposes to the death of her husband and exhibits his death certificate. The applicant also deposes that, to the best of her knowledge and information and belief, the deceased had testamentary capacity at the time of executing his will.

- [11] Finally, the applicant deposes that her marriage with the deceased had never been dissolved or annulled and that she is one and the same as the Virginia May Gray named as executor in the will. The applicant deposes to the fact that she does not know of any matter which might bear on her standing as a fit and proper person to realise and administer the estate as required by the *Succession Act 1981* (Qld) and the *Uniform Civil Procedure Rules 1999* (Qld).
- [12] Mr Riaz Ahmed Shah has sworn two affidavits in the proceeding. He deposes to the fact that the original will was held by his firm until 3 March 2023, when the applicant requested and collected the original will. Mr Shah exhibits a copy of his firm's safe custody index sheet, which identifies that, amongst other documents, the applicant had taken the original will of the deceased. That document is dated 3 March 2023 and is signed by the applicant.
- [13] Mr Shah separately deposes to the fact that on 23 February 2023, the deceased's original will dated 5 April 2004 was taken out of the firm's safe custody packet for the purpose of making a copy of it. At that time, Mr Shah certified the copy as a true copy of the original will and kept the certified copy with other working papers in the file for the estate administration. Mr Shah exhibits a copy of the certified copy of the original will.

Legal principles

- [14] There are five matters which I must be satisfied of in order for the Court to grant probate of a lost will, namely:¹
- (a) there actually was a will;
 - (b) that the will revoked all previous wills;
 - (c) the presumption that when a will is not produced it has been destroyed has been overcome;
 - (d) there must be evidence of the will's terms; and
 - (e) there must be evidence of the will's execution.

¹ *Price v Tickle* [2013] 1 Qd R 236 at [26] per McMeekin J, citing *Curley v Duff* (1985) 2 NSWLR 716, approved by de Jersey CJ in *Will of Dianne Margaret Gardie* [2013] QSC 265 at [8].

- [15] I am satisfied that the five matters have been established on the evidence before the Court.

That there was a will

- [16] The material establishes that the deceased made a will dated 5 April 2004, which was validly witnessed. It was stored at all relevant times at the firm, John Woulfe Solicitors, until its removal from that location after the deceased had passed away. A photocopy of a certified copy of that will further corroborates that such a will existed.

That the will revoked all previous wills

- [17] Clause 1 of the certified copy of the will provides that it revoked all former testamentary dispositions and declared it to be the last will and testament of the deceased.

The presumption that when a will is not produced it has been destroyed has been overcome

- [18] The standard of proof required is that of the ordinary civil standard. The original will was held at the deceased's solicitors' firm. The original will remained there up until and after the deceased's death. Only then was it uplifted by the applicant for the purpose previously identified. It was then lost by the applicant. The material before the Court provides an appropriate explanation for its loss after the deceased's death. The presumption has been overcome.

There must be evidence of the will's terms

- [19] The photocopy of the certified copy of the will provides evidence of the terms of the will.

There must be evidence of the will's execution

- [20] The photocopy of the certified copy of the will evidences that it was executed in accordance with the requirements of s 10 of the *Succession Act 1981* (Qld), in that it was signed by the deceased in the presence of two witnesses with an appropriate attestation clause to that effect.

Conclusion

- [21] Having been satisfied of the matters set out above, it is appropriate that I make orders to admit the copy to probate on the usual basis, that is, until the original will or more authenticated evidence of it be brought and left in the Registry.

Order

- [22] A grant of probate of the will of Steven Bruce Gray as contained in a copy thereof dated 5 April 2004 be granted to Virginia May Gray as sole executor thereof, limited until the original will or more authenticated evidence thereof be brought into and left in the registry of this Court. This order is subject to the formal requirements of the Registrar.