

SUPREME COURT OF QUEENSLAND

CITATION: *In the Will of Hans-Juergen Meyer* [2024] QSC 141

PARTIES: **RE: IN THE WILL OF HANS-JUERGEN MEYER,
DECEASED**

NOELINE MARGARET FAIRLESS
(first applicant)

CARMEN BERNADETTE VAN NIEKERK
(second applicant)

FILE NO/S: BS No 13261 of 2023

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 2 July 2024

DELIVERED AT: Brisbane

HEARING DATE: 21 May 2024

JUDGE: Kelly J

ORDERS: **1. Pursuant to rule 388(2) of the *Uniform Civil Procedure Rules 1999* (Qld), paragraph 3 of the orders made on 21 May 2024 is corrected so that it reads:**

“3. For the avoidance of doubt it is declared that a true copy of the Will of the late Hans Juergen-Meyer dated 6 June 2023 is exhibit B to the affidavit of Keith Robert Bow filed 10 April 2024 which contains five pages comprised of one handwritten page and four typed pages.”

2. The parties have liberty to apply.

CATCHWORDS: SUCCESSION – MAKING OF A WILL – EXECUTION – INFORMAL DOCUMENT INTENDED TO BE WILL – GENERALLY – application pursuant to s 18 of the *Succession Act 1981* (Qld) to dispense with execution requirements for a will – where deceased was gravely ill and provided his solicitor with a testamentary document comprising four typed pages and one handwritten page – where the deceased told his solicitor that the testamentary document contained the terms of his new will – where the testamentary document did not satisfy s 10 of the *Succession Act 1981* (Qld) as it was not witnessed

– whether the deceased intended for the testamentary document to form his will

Succession Act 1981 (Qld), s10, s 18

Hatsatouris v Hatsatouris [2001] NSWCA 408, cited

Re Estate of Brock [2007] VSC 415, cited

Re Spencer (deceased) [\[2014\] QSC 276](#), cited

COUNSEL: R Haddrick for the applicants

SOLICITORS: AVA Solicitors for the applicants

- [1] Hans-Juergen Meyer (“the deceased”) died in the Robina Hospital on 11 June 2023. The cause of his death was pancreatic cancer. There was no issue that he retained testamentary capacity. On 7 June 2023, he had met with his solicitor at his mother’s unit for the purpose of providing instructions for a new will. On that occasion, he provided a handwritten page and four typed pages¹ in the form of a will (together the five pages are referred to as “the testamentary document”) to his solicitor, Mr Bow. The handwriting on the handwritten page was the deceased’s handwriting. The deceased had written “Hans” at the bottom of the handwritten page and had signed and dated each of the typed pages “6.6.2023”. The applicants are the executors nominated by the testamentary document. They applied for orders under the *Succession Act 1981* (Qld) (“the Act”) dispensing with the requirement that the testamentary document be witnessed by two persons and seeking a grant of probate in respect of the testamentary document.
- [2] The application was heard by me in the applications list on 21 May 2024. All interested parties had been served with the application and no party objected to or opposed the orders sought. On 21 May 2024, I made the following orders:
- “1. Pursuant to ss 6 and 18(2) of the *Succession Act 1981* (Qld) (the Act), the requirement that the Will of the late Hans-Juergen Meyer, dated 6 June 2023, be witnessed by at least two persons pursuant to s 10(4) of the Act, be dispensed with.
 2. Pursuant to s 6 of the Act, a grant of probate of the Will of the late Hans-Juergen Meyer, dated 6 June 2023, be granted to Noeline Margaret Fairless and Carmen Bernadette Van Niekerk, as executors.
 3. For the avoidance of doubt, it is declared that the Will of the late Hans-Juergen Meyer, dated 6 June 2023, is the same document and identical to the document which is Exhibit B of the affidavit of Keith Robert Bow, sworn on 4 April 2024 and filed in the Court’s registry on 10 April 2024.
 4. The estate of the late Hans-Juergen Meyer pay the costs of this application.”
- [3] These are my reasons for those orders.

¹ Exhibit B to the affidavit of Keith Robert Bow filed 10 April 2024.

- [4] On 22 February 2023, the deceased had signed a will and an advanced health directive prepared by Mr Bow.
- [5] In March 2023, the deceased contacted Mr Bow and stated that he was considering changing his will but first needed to talk to one of the parties named in the existing will. On 2 June 2023, the deceased contacted Mr Bow's office and made an appointment for Mr Bow to meet with him at his mother's unit at 2.30pm on 7 June 2023. The purpose of the meeting was for the deceased to give instructions for a new will.
- [6] When Mr Bow attended the unit, he was met by Ms Carmen Van Niekerk, one of the applicants, who, visibly distressed, advised Mr Bow that the deceased was "in a very bad way". She mentioned that the deceased had told her not to call an ambulance until he had seen Mr Bow. Mr Bow went inside and found the deceased lying on the floor, not moving and his breathing was faint. At this point, Mr Bow insisted that Ms Van Niekerk call an ambulance. Mr Bow spoke to the deceased and noticed that the deceased was able to "rouse himself". Mr Bow observed the deceased to make "a determined effort with all the strength and willpower that he had available to focus and talk to me". Mr Bow described the deceased as having made "a great effort, all the time clutching my hand as hard as he could to talk to me". The deceased moved towards a bench on which rested the testamentary document. At this point, the deceased made reference to his intention to change his will, handed the testamentary document to Mr Bow and said words to the effect that the testamentary document contained the terms of his new will. Mr Bow observed the deceased to "noticeably relax" once the deceased had handed the testamentary document to Mr Bow and told him that it contained the terms of his new will.
- [7] The ambulance shortly after arrived and the paramedics performed tests on the deceased. The paramedics advised Mr Bow that the deceased was gravely ill and that his bodily functions were shutting down. The ambulance took the deceased immediately to the emergency department of the hospital.
- [8] The testamentary document notably revokes all former wills and testamentary dispositions made by the deceased and declares that the document is his last will and testament. Mr Bow has analysed the testamentary document and compared it to the will dated 22 February 2023. The notable changes are the removal of a Mr Cooley as executor and the removal of a provision for Mr Cooley to receive the deceased's household chattels and a vehicle. The testamentary document provides that Mr Cooley is permitted to collect specific items made known to him by the deceased under the supervision of Ms Van Niekerk. A pecuniary legacy bequeathed upon Ms Kay Lelund is decreased under the testamentary document from \$250,000 to \$150,000. An additional pecuniary legacy of \$100,000 is bequeathed to Ms Van Niekerk.
- [9] The testamentary document clearly did not satisfy s 10 of the Act in that, although signed by the deceased, it was not witnessed. Section 18 of the Act, which allows the Court to dispense with execution requirements for a will in certain circumstances, is in the following terms:

"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)."

[10] Section 18 is a remedial section and the circumstances which may engage its operation are many and varied. Each case will depend upon its own facts.² In *Re Spencer (deceased)*,³ Dalton J was prepared to proceed on the basis that "there must simultaneously be an extant document and the requisite intention, in order to satisfy the requirements of the section".⁴ Her Honour made reference to some New South Wales⁵ and Victorian⁶ authorities which spoke in terms of a requirement that the deceased should intend that the document, without more on her or his part, operate as her or his will. That postulated requirement might have some significance in a case where, for example, the will was yet to be sighted or signed by the deceased. With reference to those authorities, her Honour was careful to note that no such requirement was imposed by s 18 of the Act⁷ and the Court should not apply a gloss upon the statutory language.⁸

[11] The present case, however, is factually more straightforward. There was a document, the testamentary document, which had been prepared and signed by the deceased. The deceased said to his solicitor words to the effect that the testamentary document contained the terms of his new will. After handing the document into the care of his solicitor and stating that it contained the terms of his new will, the deceased was

² *Re Spencer (deceased)* [2014] QSC 276, [53].

³ [2014] QSC 276.

⁴ *Ibid*, [53].

⁵ *Hatsatouris v Hatsatouris* [2001] NSWCA 408.

⁶ *Estate of Peter Brock* [2007] VSC 415.

⁷ *Re Spencer (deceased)* [2014] QSC 276, [55].

⁸ *Ibid*.

observed to “noticeably relax”. Based on all of this evidence, I was satisfied that the deceased intended for the testamentary document to form his will.

- [12] The requirements of s 18(2) of the Act having been satisfied, it was appropriate to make the orders sought by the application. In the course of preparing these Reasons it has become apparent that paragraph 3 of the orders made on 21 May 2024 contains a mistake arising from an accidental slip. Pursuant to rule 388(2), paragraph 3 of the orders made on 21 May 2024 is corrected so that it reads:

“3. For the avoidance of doubt it is declared that a true copy of the Will of the late Hans Juergen-Meyer dated 6 June 2023 is exhibit B to the affidavit of Keith Robert Bow filed 10 April 2024 which contains five pages comprised of one handwritten page and four typed pages.”