

CITATION: *In the Estate of Neve* [2024] NTSC 79

PARTIES: IN THE ESTATE OF THE LATE BRYLIE
CAROL NEVE

ON REFERENCE from the Registrar of the
Supreme Court of the Northern Territory

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 2024-02322-SC

DELIVERED: 4 September 2024

HEARING DATE: 4 September 2024

JUDGMENT OF: Reeves J

REPRESENTATION:

Counsel:

Applicants: Self represented

Solicitors:

Applicants: Self represented

Judgment category classification: C
Judgment ID Number: Ree2403
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

In the Estate of Neve [2024] NTSC 79
No. 2024-02322-SC

**IN THE ESTATE OF THE LATE
BRYLIE CAROL NEVE**

**ON REFERENCE FROM THE
REGISTRAR OF THE SUPREME
COURT OF THE NORTHERN
TERRITORY**

CORAM: REEVES J

REASONS FOR JUDGMENT

(Delivered ex tempore 4 September 2024)

- [1] On 11 April 2024, Brylie Carol Neve made a will (the Will) using a ‘do it yourself will kit’. Ms Neve was, at the time, suffering from terminal cancer.
- [2] The Will was witnessed by Ms Neve’s husband, Timothy John Neve and her mother, Rosalee Carol Webb. They were appointed joint executors.
- [3] Under clauses 4 and 5 of the Will, Ms Neve gave \$50,000 to her mother and the balance of her estate, after a number of other bequests, to her husband. None of those involved in the preparation and execution of the Will were aware at the time that a disposition made to a person who has witnessed a will, is void.

- [4] Tragically, Ms Neve died four days after executing her Will. As well as her husband and mother, Ms Neve was survived by two children, Max Timothy Neve, born 10 October 2006 and Ava Rose Neve, born 22 October 2007.
- [5] The voidance issue to which I have referred was discovered by the Supreme Court's Registrar when Mr Neve and Ms Webb applied for probate of the Will in June this year. Having made that discovery, the Registrar referred the application to the Court under s 17(2) of the *Administration and Probate Act 1969* (NT).
- [6] The statutory provision that gives rise to the present issue is s 12(1) of the *Wills Act 2000* (NT). It provides that where "a beneficial disposition is given or made by will to a person who is a witness to the will, the disposition is void to the extent that it concerns the person or a person claiming under him or her."
- [7] However, a number of exceptions are created by s 12(2) of that Act. One of them, contained in subs (2)(c) is as follows:
- (2) A beneficial disposition is not void under subs (1) if:
- ...
- (c) the court is satisfied that:
- (i) the testator knew and approved of the disposition; and
- (ii) the disposition was given or made freely and voluntarily by the testator.
- [8] In this referral, both Mr Neve and Ms Webb have made and filed affidavits directed to that exception. In his affidavit, Mr Neve said:

I was with Brylie at the time she prepared her Will on 11 April 2024, and I witnessed the Will along with Brylie’s mother ROSALEE CAROL WEBB. Brylie completed her Will using a “Do it Yourself” Will kit and did not take any legal advice in relation to the completion of her Will, and nor was she aware of the ramifications of having beneficiaries act as witnesses to the Will. Likewise, I was also unaware of those ramifications.

Brylie had been given a loan of \$50,000 by Rosalee approximately three years prior to her death to assist in funding the costs of sending our son, Max, to a private school interstate. When it became apparent to Brylie that she was unlikely to survive her cancer diagnosis for much longer she wanted to ensure that Rosalee would be repaid the \$50,000. She therefore resolved to prepare a Will which included provision for a bequest of \$50,000 to Rosalee to ensure that Rosalee was repaid in full.

Apart from the bequest to Rosalee, as described above, and some small amounts bequeathed to our children, Max and Ava, it was Brylie’s intention that the remaining assets of her estate be made available to me as I had promised her that I would always look after them and provide for their needs.

To the best of my knowledge, prior to the execution of the Will on 11 April 2024 Brylie had never had a Will.

- [9] Ms Webb’s affidavit was to almost identical effect. Having regard to this evidence, I am satisfied that the deceased knew and approved of the dispositions to her husband and her mother, and that those dispositions were made freely and voluntarily.
- [10] Accordingly, I make an order in terms of the draft provided granting probate to the Applicants of the Will dated 11 April 2024. A copy of this order will be sealed and retained on the Court file.
