

The Estate of Alexander Wood [2014] NTSC 14

PARTIES: THE ESTATE of ALEXANDER WOOD

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: 232 of 2013 (21356274)

DELIVERED: 22 April 2014

HEARING DATE: 15 April 2014

JUDGMENT OF: BARR J

CATCHWORDS:

CIVIL LAW – Probate – handwritten alterations to will – alterations signed but not duly witnessed – will as altered embodied testamentary intentions of deceased – deceased intended that will as altered should constitute his will – evidence relating to statements by the deceased admitted – Probate issued

Administration and Probate Act (NT) s 17, s 17(2)(c)

Wills Act (NT) s 8(1)(b) and (c), s 10, s 10(2) and (3), s 16(1)(a) and (d)

REPRESENTATION:

Counsel:

Applicant: C Triggs

Solicitors:

Applicant: Halfpennys

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Estate of Alexander Wood [2014] NTSC 14
No. 232 of 2013 (21356274)

THE ESTATE of ALEXANDER WOOD

CORAM: BARR J

REASONS FOR JUDGMENT

(Delivered 22 April 2014)

- [1] The applicants seek an order that probate of the deceased's will, as altered in the way explained below, be granted to them.
- [2] This matter was referred to the Court by the Registrar pursuant to s 17(2)(c) *Administration and Probate Act* because the Registrar was doubtful whether probate should be granted.
- [3] The evidence establishes that the deceased made his will on 3 February 2003. The will was validly executed and otherwise satisfied the statutory requirements.
- [4] At a later time, the deceased made a number of handwritten alterations to his will. Of relevance, or possible relevance, he crossed out the names of the two joint executors and inserted the names of the applicants. He crossed out paragraph 3, in which he had made a specific bequest of family heirlooms, and in its place inserted a paragraph which said:

“Individual items which I have promised to a specific person will bare the Christen name or nickname of that particular person. This must be respected.” [sic]

[5] He crossed out paragraph 4, and wrote above it “No longer relevant”.

Paragraph 4 contained a conditional gift of the deceased’s share in the estate of his mother.

[6] Finally, he crossed out the direction in paragraph 7 that he be buried in a pauper’s coffin and instead stated his wish to be cremated and his ashes “spread over the stone country of Katherine Gorge”.

[7] All of the alterations were signed “Alexander Wood”. The signature appeared immediately underneath each of the alterations. Both of the applicants have identified the handwriting where the amendments were made on the will as that of the deceased.¹

[8] Under s 16(1)(a) *Wills Act*, an alteration made to a will after the will is executed is effective if it is executed in a manner in which the will is required to be executed by the Act. One requirement for the valid execution of a will is that the testator’s signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and those witnesses must attest and sign the will in the presence of the

¹ Affidavit Shane Wood sworn 15 April 2014, paragraph 5; affidavit of Shiralee Blac (nee Wood) sworn 15 April 2014, paragraph 7.

testator.² In this case there is no indication that the alterations made by the deceased were duly witnessed.

[9] Section 16(1)(d) *Wills Act* provides an alternative basis on which an alteration made to a will after the will is executed may be effective, that is, if it is “a document that under section 10 the Court is satisfied embodies testamentary intentions of a deceased person and so constitutes an alteration to the will of the deceased person...”.

[10] Relevantly, s 10 *Wills Act* reads as follows:

“If the court is satisfied that a deceased person intended a document or part of a document that purports to embody the testamentary intentions of the deceased person (but which is not executed in the manner required by this Act) to constitute his or her will or an alteration of his or her will ..., the document or part of the document constitutes the will of the deceased person or an alteration of the will ..., as the case requires.”

[11] I am satisfied from the nature and content of the alterations that (1) the will, incorporating the alterations referred to, embodies the testamentary intentions of the deceased, and that (2) the deceased intended that the will as altered should constitute his will. It therefore follows as a matter of law that (3) the alterations are effective³ and that (4) the will, as altered, constitutes the will of the deceased.⁴

[12] In forming a view as to whether the deceased intended the document or part document to constitute his will the Court may have regard, in addition to the

² *Wills Act*, s 8(1)(b) and (c).

³ s 16(1)(d) *Wills Act* (NT).

document itself, to any evidence relating to the manner of execution or the testamentary intentions of the deceased, including evidence of statements made by the deceased.⁵ In this respect, the deceased spoke to his son Shane Wood (one of the within applicants) shortly before his death, while he was in hospital. The deceased informed his son that he had changed his will and that he wanted to take it to a lawyer to have it “properly changed”.⁶

[13] Notwithstanding that the deceased spoke about his wish to have his will “properly changed”, he had signed each of the alterations. Those several signatures, coupled with the appointment of more relevant executors than in the original will, satisfied me that the deceased had the requisite intention that the will as altered should constitute his will, at least until he arranged to have it properly changed.

Conclusion and orders

[14] I declare that the will, as altered, constitutes the will of Alexander Wood, deceased. For the benefit of persons who may need to refer to the will for its specific terms, and given the somewhat untidy and possibly confusing nature of the alterations, the text of the will of the deceased, incorporating the alterations which I have held to be effective, is reproduced in the Schedule below.

[15] I make an order pursuant to s 17 *Administration and Probate Act* authorising the Registrar to issue probate of the will of the late Alexander Wood,

⁴ s 10(2) *Wills Act* (NT).

deceased, dated 3 February 2003, as amended, to the appointed executors, Shane Alexander Wood and Shiralee Blac (Nee Wood).

[16] I direct that this judgment may be provided in full to the applicants, and to Mr Kelly Wood, who appeared at the hearing. Those persons are at liberty to provide the full judgment to anyone who has a proper interest in the outcome of the application. However, I direct that the Schedule not be included in the copy judgment published on the Supreme Court's web site.

⁵ s 10(3) *Wills Act* (NT).

⁶ Affidavit Shane Wood sworn 15 April 2014, paragraph 7.