

CITATION: *In the Estate of Grimm* [2020] NTSC 5

PARTIES: IN THE ESTATE OF GRIMM

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: 76 of 2019 (21916801)

DELIVERED ON: 3 February 2020

DELIVERED AT: Darwin

JUDGMENT OF: Grant CJ

CATCHWORDS:

SUCCESSION – Wills, Probate and Administration – Probate and Letters of Administration

Reference by the Registrar pursuant to s 17(2)(c) of the *Administration and Probate Act 1969* (NT) – Whether letters of administration with the will annexed should be granted – No grant may be made until the validity of the document proffered as a will has been established in accordance with s 10 of the *Wills Act*.

Administration and Probate Act 1969 (NT) s 17, s 22, s 33, s 66
Supreme Court Rules 1987 (NT) r 88.01, r 88.64
Wills Act 2009 (NT) s 8, s 10

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

In the Estate of Grimm [2020] NTSC 5
No 76 of 2019 (21916801)

IN THE ESTATE OF GRIMM
ON REFERENCE FROM THE
REGISTRAR OF THE SUPREME
COURT OF THE NORTHERN
TERRITORY

CORAM: GRANT CJ

REASONS FOR ORDER

(Delivered 3 February 2020)

- [1] This is a reference by the Registrar pursuant to s 17(2)(c) of the *Administration and Probate Act 1969* (NT). That section provides relevantly that the Registrar shall not, without an order of the Court, grant administration of the estate of a deceased person in any case where a caveat has been lodged or in any case in which it appears to the Registrar to be doubtful whether such a grant should be made.
- [2] The deceased died in Darwin on 14 February 2019. He was domiciled in the Northern Territory. The gross value of the estate is estimated in the Affidavit of Assets and Liabilities to be \$462,718.
- [3] At the time of his death the deceased had been in a *de facto* relationship with Nieves Castro Edwards since in or about October

2012. He is also survived by his two children, Ian Grimm and Judy Anne Wright. At the time of his death the deceased was estranged from his son, Ian Grimm.

[4] The deceased had previously been married to a woman who had children from an earlier marriage. One of those children was Roy James Dudgeon, who maintained a close relationship with the deceased until the time of his death.

[5] On 5 October 2018, the deceased prepared and executed a handwritten document purporting to be his will. At the time the deceased drafted the document he described it to Ms Edwards as his will. He advised Ms Edwards that he had drafted the document himself because he did not want to pay a legal practitioner to do so. On 5 October 2018 the deceased attended the Casuarina Square Shopping Centre and had the document witnessed by a Justice of the Peace.

[6] That document is in the following terms:

My last Will

I Wolfgang Grimm born on the 31st July 1940 in Berlin Germany. I am the sole owner of my property at 61 Britomart Gardens, Alawa Darwin N.T

My partner Nieves C. Edwards of five years will live at the property till she diceids (sic) to sell the property. After the sale, should receives (sic) 175,000 dollars from the sale of the property. Nieves my daughter Judy Ann Wright and my stepson Roy James Dudgeon. The rest of the money shall be split between my siblings. My ashes shall be split evenly

- [7] Quite apart from the problems of construction which the terms of that document present, it was not witnessed by two people in accordance with s 8 of the *Wills Act 2009* (NT) and it does not appoint an executor.
- [8] No other testamentary document has been located since the death of the deceased. Ms Edwards believes that the deceased did not leave any other will and the Public Trustee for the Northern Territory does not hold any will for the deceased.
- [9] On 29 April 2019, Ms Wright lodged a caveat at the Supreme Court Registry demanding that no grant or reseal be made in the estate of the deceased without prior notice to her. The stated basis for lodging the caveat was a question concerning the validity of the document purporting to be the deceased's will.
- [10] By reason of her limited understanding of Australian legal procedures, Ms Edwards did not take any action concerning the deceased's estate until 10 September 2019 when she consulted a legal practitioner and was advised to apply for letters of administration with the will annexed.
- [11] On 26 November 2019, a legal assistant in the employ of the legal practitioner acting for Ms Edwards made an affidavit deposing that she had that day conducted a search in the Registry of the Supreme Court which disclosed that no caveat had been lodged in relation to the estate of the deceased. It is not immediately apparent why the caveat which

had been lodged on 29 April 2019 was not located during the course of that search, although that may possibly be attributable to the fact that pursuant to r 88.64 of the *Supreme Court Rules 1987* (NT) a caveat remains in force for only six months following the date of lodgement.

[12] The legal practitioner acting for Ms Edwards has made a number of attempts to contact Ms Wright by telephone, email and registered mail since 31 October 2019. The purpose of those communications was to seek Ms Wright's consent to the grant of letters of administration. Ms Wright has made no response to those communications.

[13] The legal practitioner acting for Ms Edwards has also communicated with Mr Dudgeon for the purpose of seeking his consent to the grant of letters of administration. While Mr Dudgeon initially responded to provide details of the nature of his relationship with the deceased, he has made no further response to those communications.

[14] On 29 November 2019 Ms Edwards filed an application for the grant of letters of administration with the will annexed. That application requires the court of probate to determine whether the testamentary document complies with the required formalities for the making of a will and, if not, whether the court should dispense with the formal requirements. No grant of administration in the form sought may be made until the validity of the document proffered as a will has been established. As already noted, s 8(1) of the *Wills Act* provides:

A will is not valid unless:

- (a) it is in writing and signed by the testator or by some other person in the presence of and at the direction of the testator;
- (b) the signature is made or acknowledged by the testator in the presence of 2 or more witnesses present at the same time; and
- (c) at least 2 of those witnesses attest and sign the will in the presence of the testator.

[15] As described above, the document proffered as the deceased's will is signed by the deceased but only one witness has signed the document. Accordingly, the will is *prima facie* invalid. Section 10 of the *Wills Act* empowers this Court to dispense with the requirements for the execution of wills, and provides relevantly:

- (2) 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 or to revoke his or her will, the document or part of the document constitutes the will of the deceased person or an alteration of the will or revokes the will, as the case requires.
- (3) In forming its view whether a deceased person intended a document or part of a document to constitute his or her will or an alteration of his or her will or to revoke his or her will, the Court may have regard (in addition to the document or a part of the document) to any evidence relating to the manner of execution or the testamentary intentions of the deceased person, including evidence (whether or not admissible before the commencement of this section) of statements made by the deceased person.

[16] The Registrar does not have power to dispense with the formal requirements under s 17(1) of the *Administration and Probate Act*. That power may only be exercised by the Supreme Court on

satisfaction that the deceased intended the document to constitute his will. An application for the admission to probate of a document referred to in s 10(2) of the *Wills Act* is required to be made by originating motion and supported by an affidavit setting out the grounds of the application: *Supreme Court Rules*, r 88.01(3). The application and the affidavit in support must be served on all persons who may be prejudiced by the admission of the document to proof: *Supreme Court Rules*, r 88.01(4).

[17] So far as the question of potential prejudice is concerned, it would appear that the only person who would be prejudiced by the admission of the document to probate would be Ian Grimm. This is because he is not named as a beneficiary in the purported will, but would have some entitlement under the intestacy rules set out in Schedule 6 of the *Administration and Probate Act*. Judy Anne Wright would likely not be prejudiced by the admission of the document, as her entitlement under one construction of the purported will would exceed her entitlement under the intestacy rules. For that reason, however, she would be prejudiced if the document is not admitted to probate. Roy James Dudgeon would also not be prejudiced by the admission of the document, as he would have no entitlement under the intestacy rules. He would also be prejudiced if the document is not admitted to probate.

[18] On the material presently filed in the proceeding it would seem relatively clear that the document proffered purports to embody the

testamentary intentions of the deceased, and that the deceased demonstrated that it was his intention that the document would, without more on his part, operate as his will. However, for the reasons described above, that matter can only be determined by this Court on application in accordance with the Rules and on notice to Ian Grimm, Judy Anne Wright and Roy James Dudgeon.

[19] It should also be noted that if compliance with the formal requirements is dispensed with, the grant of administration will not necessarily mean that the administrator will be free from doubt in carrying out her executorial duties. The content of the document gives rise to some uncertainty concerning the beneficiaries intended to take the property and in what proportions, but that is a matter to be determined in the construction jurisdiction, if necessary, rather than in the probate jurisdiction.

[20] No grant of letters of administration with the will annexed may be made until the validity of the document proffered as a will has been established in accordance with s 10 of the *Wills Act*.
