

Perry & Seipel v Perry [2013] NTSC 2

PARTIES: PERRY, Teena Maree and
SEIPEL, Peter

v

PERRY, Lorraine Eva

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: 119 of 2012 (21242732)

DELIVERED: 11 January 2013

HEARING DATES: 29 November 2012 and 10 January 2013

JUDGMENT OF: BARR J

CATCHWORDS:

SUCCESSION – Wills, probate and administration – statutory requirements for will – unsigned Will Kit form Will and signed document together constitute the Will of the deceased

Wills Act (NT) s 8, s 10

Hatsatouris v Hatsatouris [2001] NSWCA 408; *Oreski v Ikac* [2008] WASCA 220; *Re Estate of Masters (dec'd)*; *Hill v Plummer* (1994) 33 NSWLR 446, considered

REPRESENTATION:

Counsel:

Plaintiff: L Detmold
Defendant:

Solicitors:

Plaintiff: Cridlands MB
Defendant:

Judgment category classification: B
Judgment ID Number: Bar1301
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Perry & Seipel v Perry [2013] NTSC 2
No. 119 of 2012 (21242732)

BETWEEN:

**TEENA MAREE PERRY and
PETER SEIPEL**
Plaintiffs

AND:

LORRAINE EVA PERRY
Defendant

CORAM: BARR J

REASONS FOR JUDGMENT

(Delivered 11 January 2013)

- [1] Steven Thomas Perry (“the deceased”) died on 1 September 2011. The cause of death was stated to be chronic liver disease, alcoholic cirrhosis and “epilepsy – head injury (1990)”. The deceased had been married but his wife predeceased him and they had no children.
- [2] The deceased left in his papers two documents, and I am satisfied that the deceased intended that each of the documents should constitute his Will.
- [3] One of the two documents read as follows:

Steve Perry

Lot 3716 Namarada Drv, Dundee Beach 0840 NT

My property there is to be sold and divided this way:

Ramon Perry – \$150,000.00

Teena Perry – Andrew Perry – Dave Perry – Mum Perry to divide the rest between them.

All costs 5 ways.

Triton 4 x 4 – Dave Perry

Quintrex boat – Dave Perry

Signed “Steven Perry”

[4] The other document was on a page headed “Will Form” contained within a document entitled “The Prepare-Your-Own Legal Will Pack”. The “Will Form” document, as completed by the deceased, read relevantly as follows:

1. This is the last Will of me, Steven Thomas Perry of Lot 3716 Namarada Drv, Dundee Beach postcode 0840 in the State/Territory of NT which commences on this page and which concludes where the words “This is the end of my Will” appear. By this Will I revoke all previous Wills and testamentary acts and dispositions.

2. Executor/Executrix

I appoint Teena Perry (sister) of Victoria postcode 3556 in the State/Territory of Victoria and I appoint Peter Siepel (mate) of NT postcode 0840 in the State/Territory of NT to be the Executor(s) of my Will and Trustee(s) of my estate, ...¹

5. Residuary/Residue of my Estate

I direct my Executor(s) to pay all my debts and then I give the residue of my estate to

¹ Irrelevant sections 3 and 4 deleted.

Lot 3716 Namarada Drive 0840

To be sold and divided Ramon Perry \$150,000.00, Teena Perry, Andrew Perry, Dave Perry Mum Perry divide whats left between them.

All costs 5 ways.

Triton 4 x 4 and old Quintrex boat – Dave Perry

- [5] In section 8 of the form, the deceased expressed the wish to be cremated with his ashes to be thrown into the sea with those of his deceased wife. He also indicated that it was not his wish that his body organs be used for the medical benefit of other people.
- [6] The document extracted in par [3] above was signed by the deceased; that in par [4] was not. Nonetheless, there is no issue that both of the documents were in the handwriting of the deceased. The deceased's mother has identified the handwriting as his.²
- [7] There is no evidence and no indication as to the date or dates on which the documents were written or brought into existence. Both documents were found by Teena Maree Perry, the sister of the deceased, when she looked in a concertina file located at the deceased's house. Ms Perry has deposed that she is unsure as to whether the documents she found were "together or separate" in the concertina file.³ I assume she refers to whether they were in the same or different folds or compartments in the concertina file.

² Affidavit Lorraine Eva Perry sworn 10 December 2012, par 5, par 6, par 7 and par 8.

³ Affidavit Teena Maree Perry sworn 5 November 2012, par 4.

- [8] It is clear from a consideration and comparison of the two documents that both make identical provision from the deceased's estate in favour of the same beneficiaries. Those persons are the deceased's siblings and mother. There is a very slight difference in the words used, but the effect is the same. It may be noted that in the "Will Form" document the deceased purported to appoint two named executors; in the other document he did not appoint any executors.
- [9] Under s 8(1) *Wills Act*, neither of the documents written by the deceased is a valid Will because neither satisfies the statutory requirements that it be signed by the Testator (s 8(1)(a)) and that such signature be made or acknowledged by the Testator in the presence of two or more witnesses present at the same time (s 8(1)(b)).
- [10] Notwithstanding such formal invalidity, each document will still constitute the Will of the deceased if the court is satisfied that the deceased intended that the document constitute his Will.⁴
- [11] I am satisfied that both documents purport to embody the testamentary intentions of the deceased and I am satisfied that the deceased intended each document to constitute his Will.⁵
- [12] It is possible that the Will set out in par [4] was written after the Will set out in par [3], such that it revoked the earlier Will. It seems odd that an

⁴ s 10(2) *Wills Act* (NT).

⁵ *Hatsatouris v Hatsatouris* [2001] NSWCA 408 at [56]-[59]; *Re Estate of Masters (dec'd)*; *Hill v Plummer* (1994) 33 NSWLR 446 at 455; *Oreski v Ikac* [2008] WASCA 220 at [52]-[55].

unsigned document might have revoked a signed one. However, there is no basis on which I can be positively satisfied about the order in which the Will documents were written or completed. Indeed it is not necessary for me to do so because identical provision in favour of all beneficiaries was made in each Will document.

[13] In my opinion, the two documents should be read together as a composite Will. That is consistent with the deceased having retained both documents in the papers kept in his concertina file, and his presumed intention in so doing. The two documents may be treated as having been executed at the same time. The effect of treating the two documents as one document is that neither is to be seen as having revoked the other. Therefore, the appointment of Teena Maree Perry and Peter Seipel as executors stands as a valid appointment. Moreover, notwithstanding that the deceased did not sign his Will Kit form, his signature on the handwritten document corroborates his intended distribution of his estate and is entirely consistent with the gifts made in the Will Kit form Will.

[14] I declare that the original documents of Exhibits “TMP2” and “TMP3” referred to in the affidavit of Teena Maree Perry sworn 5 November 2012 together constitute the Will of Steven Thomas Perry deceased.

[15] I am reassured in my decision in this matter by the fact that the mother of the deceased, Lorraine Eva Perry, has sworn an affidavit in which she has renounced the greater share in the estate to which she would be entitled in

the event of her son's intestacy in favour of taking the share provided to her for under her deceased son's Will.

[16] I invite the plaintiffs to file formal orders to give effect to this decision.
