

Update Wills and Succession

Service 83 — November 2023

Legislative amendments

Natural and Built Environment Act 2023 No 46

This Act amended on 24 August 2023:

- ss 4, 99 of the Te Ture Whenua Maori Act 1993

Family Court (Family Court Associates) Legislation Act 2023 No 25

This Act amended on 6 October 2023:

- ss 25, 37, 40, 42, 43 of the Property (Relationships) Act 1976
- ss 15, 48, 66, 68, 69, 70, 72 of the Protection of Personal and Property Rights Act 1988

Case commentary

Chapter 2 — Nature of a will — proof of a secret trust

Hita v Hita [2023] NZHC 2171 concerned a dispute between siblings where the will-maker had appointed one daughter an executor and left his entire estate to her. The Court found there was no undue influence. Moreover, a statement made by the deceased that he had left everything to his daughter to “sort out” did not establish the existence of a secret trust. He had left the matter to his daughter’s discretion and there were no specific instructions from the will-maker that could be construed as establishing a trust obligation. These instructions only gave rise to a moral duty. See [2.20].

Chapter 3 — Testamentary capacity

In *Re Sole* [2023] NZHC 2537 Becroft J found that the will-maker had made a second will that was “consistent with a logical, responsible, and reasoned disposition of his assets”. See [3.1.1].

Chapter 4 — Formal requirements for wills — attestation clauses

In *Roberts v Oldham* [2023] NZHC 2106 omissions in an attestation clause in a will that satisfied the formal requirements did not invalidate the will. Therefore, it was not necessary for the court to exercise a declaratory power under s 14 to validate an already valid will simply because of errors found in an included attestation clause. See [4.5].

Chapter 4A — Validation of wills by the High Court — multiple documents — s 14, Wills Act 2007

Section 14 can also apply to multiple documents provided the totality of the documents represent the deceased’s will. In *Re Cook* [2023] NZHC 820 a draft will and an email containing further testamentary instructions were both declared to be the will of the deceased. See [4A.1].

Chapter 4A — Validation of wills by the High Court — codicil — s 14, Wills Act 2007

In *Morice-Rangihuna v Rangihuna* [2023] NZHC 1162, a handwritten note that contained a name ambiguous on its face, but understood by the executor and other interested parties, was declared as a valid codicil. See [4A.2].

Chapter 4A — Validation of wills by the High Court — suicide note — s 14, Wills Act 2007

In *Re Lloyd* [2023] NZHC 2514, the Court noted the fact the deceased appreciated the consequences of taking their own life was a factor indicative of testamentary capacity. A modest amount of alcohol did not impair the deceased from making testamentary dispositions in a suicide note. The note was validated as a will. See [4A.3].

Chapter 4A — Validation of wills by the High Court — not validated — testamentary intentions — s 14, Wills Act 2007

The decision in *Robinson v Beaman* [2022] NZHC 2822 is an example where the Court was not satisfied that a document, an email, did not represent the final testamentary intentions of the will-maker. The deceased had an earlier valid will but due to a change of circumstances, a new de facto partner with whom he had two children, he expressed a desire to update his will. However, at no time did it appear that the deceased settled on their testamentary intentions. This decision was upheld by the Court of Appeal in *Robinson v Beaman* [2023] NZCA 468. See [4A.9].

Chapter 4A — Validation of wills by the High Court — photocopy of a lost will — s 14, Wills Act 2007

A photocopy of a lost will was validated as a will in *Re Riwaka-Love* [2023] NZHC 1088. See [4A.10].

Chapter 4A — Validation of wills by the High Court — draft wills validated — s 14, Wills Act 2007

Draft wills were validated in:

- *Re Barfuss* [2023] NZHC 1579
- *Re Beavis* [2023] NZHC 2519
- *Re Bradley* [2023] NZHC 2026
- *Re Clay* [2023] NZHC 1726
- *Re Cross* [2023] NZHC 2497
- *Re Crowle* [2023] NZHC 1775
- *Re Fairly* [2023] NZHC 2491
- *Re Kahi* [2023] NZHC 2593
- *Public Trust v Fairbairn* [2023] NZHC 2605
- *Public Trust v Forster* [2023] NZHC 2339

See [4A.10].

Chapter 5 — Alteration of wills — s 15, Wills Act 2007

In *Re Sellin* [2023] NZHC 1669, a duly executed will was found in the deceased's possessions. Instead of leaving specific legacies in the will, the will-maker referenced another document titled Appendix A found in a blue pouch. One provision had been struck out with a red pen. The will-maker signed the document but it was not witnessed. A number of other appendices found in the blue pouch concerned estate and funerary matters, including an earlier version labeled "Appendix [a]". Attached to the blue pouch was a post-it note that left further instructions that were consistent with the struck out

provision. The Court declared Appendix A to be a valid codicil to the will and that it superseded the wishes made in Appendix [a]. The post-it note attached to the blue pouch furnished further evidence of the will-maker's intentions to change their will except the struck out provision. See [5.1].

Chapter 6 — Construction of wills — correction of wills — s 31, Wills Act 2007

In *Re Stokes* [2023] NZHC 2092, a correction was made under s 31 because the drafting solicitor had instructions that the will-maker and his son were estranged, and the son was not to be included in the will. However, the will provided for “my children” to receive the residue of the estate without distinction. Because the will-maker had left clear instructions that he did not wish his son to receive anything from his estate, the will was corrected accordingly to include only the will-maker's other children. See [6.2].

Chapter 6 — Construction of wills — correction of wills — s 31, Wills Act 2007

Section 31 has also been invoked to fix somewhat muddled clauses found as a result of the will-maker using a “do-it-yourself” will kit in *Roberts v Oldham* [2023] NZHC 2106. See [6.2].

Chapter 7 — Gifts by will — disposition in fractional parts — s 28, Wills Act 2007

Section 28 may be invoked where a document is sought to be validated as a will under s 14 of the Act and one of the beneficiaries has deceased: *Re Mylonas* [2023] NZHC 2449. See [7.3].

