



Australian surf photographer's Will contested

Date: Monday February 20, 2023

On 23 December 2022, the Supreme Court of Queensland handed down its judgement in the deceased estate case of [Shaw v Tane \[2022\] QSC 301](#). The case involved one party [disputing/contesting the validity of a Will](#) of the late Martin Joseph Tullemans, a well-known Australian surf photographer from the 1970s, who died on 1 December 2020.

Dispute background

The deceased's sister Maria Shaw ('Mary'), sought a [Grant of Probate](#) for a Will dated 18 October 2019 ('2019 Will').

Tamar Tane ('Tamar'), the daughter of the deceased's former partner (Barbara), disputed the validity of the 2019 Will, seeking a Grant of Probate for a Will dated 6 May 2013 ('2013 Will').

The 2013 Will

The 2013 Will named Tamar as the executor of Martin's estate and left the entirety of the estate to Tamar and her three siblings in equal shares as tenants in common. The authenticity and validity of this Will was not disputed.

The 2019 Will

The 2019 Will bequeathed \$50,000 to Tamar to divide between her and her siblings, \$50,000 to Martin's brother Frank and the residue to Mary. The Will named Mary and her husband of 43 years Michael Shaw ('Mike'), as executors.

The Will was prepared on a handwritten pro forma 'Prepare-Your-Own Legal Will Pack',

which for the most part, was transcribed by Mary's son, David Shaw. The Will was purportedly signed by Martin, Deborah Phillips ('Deb'), a friend and neighbour and Martin's (now late) father, Petrus Tullemans. In addition, a typed document on Martin's letterhead was said to have been signed by the same people, expressing Martin's wishes ('Letter of Wishes').

Question for the court to determine

The key question for the court to decide was whether the 2013 Will was revoked by the 2019 Will. This question required the court to consider whether the 2019 Will was validly executed or, alternatively, whether it was a document Martin intended to form his Will.

Plaintiff (Mary's) case

Mary's case relied on evidence provided by herself, her son David and her husband Mike regarding how the 2019 Will was created and found.

David gave evidence that he was the only witness present when the Will and Letter of Wishes were signed and that Martin instructed him not to tell anyone about the documents until after he died. Mary and Mike gave evidence that they found the 2019 Will whilst cleaning out Martin's cabin while he was in hospital in April 2020. The pair stated they opened the envelope containing the documents and had a quick look before Mary put the documents in a cupboard.

Mary also put into evidence three authorities which purported to authorise that Mary keep the photographs from Martin's surf photography business and that she could use or exhibit them as she pleased.

Defendant (Tamar's) case

Tamar's case relied on evidence provided by Deb that she was not present when either Martin or Petrus signed the 2019 Will, having never met Petrus. Deb gave evidence that Mary asked her to sign a document for Martin, which she did so without reading, not realising she had signed a Will and denied signing the Letter of Wishes.

Proper execution of the 2019 Will

Despite questions around the reliability of Deb's evidence, the court was not satisfied that the 2019 Will was duly executed by Martin.

In reaching this conclusion, the court found Mary to be a disingenuous witness and that all her evidence was to be treated with care. The same was said of evidence provided by Mike, who struck the court as willing to support his wife 'come what may'.

The court considered that Mary provided implausible and incredible accounts of conversations she had overheard. The court rejected Mary's recollection of a diary entry of a meeting with Deb, citing it as a 'reconstruction designed to bolster her case' and considered any dates written by Mary to be 'treated circumspectly' given an admission of inserting a date after the fact previously.

Execution block of the Will was clumsy

The court found the execution block (where parties sign and witness the document) of the 2019 Will to be a distinct oddity given the clumsily written date from numerous amendments.

It was undisputed that Martin's signature had been traced over or touched up on the 2019 Will. Three reports from a forensic document examiner were obtained, which explored theories for the retracing. Without finding the signature was forged, the court was unsatisfied that Martin had signed the 2019 Will.

Informal Will option considered by the court

Given the court was not satisfied that the 2019 Will was properly executed, the court then considered whether the 2019 Will could be considered an informal Will. This requires that the court be satisfied that the evidence establishes that the testator (ie, Martin as the Will-maker) by some acts or words, either at the time the Will was brought into being or at some later time, demonstrated that it was his intention that it should operate as their Will.

Due to the totality of suspicious circumstances, the court was not satisfied the Letter of Wishes was drafted by Martin nor that it or the 2019 Will was intended by Martin to form an informal Will, including that:

the document was written almost entirely by David;

the document was found and propounded by Mary, a major beneficiary;

specific distributions to others may have been consistent with an effort to prevent suspicion or litigation;

the substantial departure from the 2013 Will;

the 2019 Will referred to the estate of Petrus, who did not die until May 2020;

Barbara's name was incorrectly spelled in the document as 'Barbra'. The incorrect spelling was used by Mary on another document, whereas in numerous documents, Martin spelled the name correctly;

a typing quirk in the document was something Mary did too;

the word "arsehole" was placed within quotations marks in the document with no apparent reason given Martin had used this word to describe Frank on other occasions;

the reference by Martin to Tamar being 'not really big in their life' was inconsistent with the solicitor's file note from April 2020;

it was undisputed that Mary found blank copies of Martin's letterhead while cleaning out his cabin;

there was no evidence of Martin discussing the 2019 Will with anyone after it was made; and

there were significant questions as to the execution block.

Solicitor file notes add further doubt to validity of the 2019 Will

One matter which the court considered was a file note written by a solicitor of a meeting between the solicitor, Mary, Mike and Martin. The file note included references to:

the 2013 Will;

Martin's reason for drafting the 2013 Will, being the passing of his partner Barbara;

the maintained relationship between Martin and Tamar;

Martin not knowing what he wanted to do with his estate and letting the solicitor know that he would come back to him should he make any decisions.

This file note was from April 2020 (after the 2019 Will was said to have been made) and did not refer to the 2019 Will, which the court considered in their decision.

There was then a subsequent file note from the same solicitor approximately 5 days after the earlier meeting, following Martin's admission to hospital. The file note was of a conversation between Mary and the solicitor, saying that she was unsure whether her father still had testamentary capacity but that he was happy to leave the (2013) Will as it was.

The court again considered that this was further evidence that Martin was not aware of the 2019 Will as he would not have otherwise said that he was still happy with the 2013 Will.

Mary's evidence referencing authorities

In relation to the purported authorities regarding Martin's surf photography business, the court considered that it was unusual that

Martin would have created three authorities which were largely the same.

The Supreme Court's decision

The Court determined that the circumstances of the 2019 Will had a well-founded atmosphere of suspicion, which was not satisfactorily removed.

The Court was unsatisfied that the 2019 Will propounded Martin's express and true wishes, consequently finding in favour of the 2013 Will, which provided the benefit of the estate to Tamar and her three siblings.

Get help from a Wills and estates lawyer

Contested estates can be complicated, and there is an added level of difficulty as it involves disputes and conflict after the death of a loved one.

At IM Lawyers, you'll get the right advice about your legal rights and options. We can alleviate a lot of the pressures and avoid a lot of issues when contesting a Will or administering a deceased estate.

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