

**IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY**

CIV-2008-476-612

IN THE MATTER OF Section 14 of the Wills Act 2007

THERESE MACNEIL, OF ADELAIDE,
RETAIL ASSISTANT, DECEASED

Hearing: On the papers

Appearances: M F Farr for applicant

Judgment: 28 September 2009 at 3pm

I direct the Registrar to endorse this judgment with a delivery time of 3pm on the 28th day of September 2009.

JUDGMENT OF MACKENZIE J

[1] There is before the Court an application for an order under s 14 of the Wills Act 2007 (the Act) declaring as a valid will a document executed by the deceased dated 20 January 2008. The application is made by Mr M K Cessford, the de facto partner of the deceased.

[2] The deceased died in Adelaide on or about 21 January 2008. Mr Cessford's evidence is that the deceased committed suicide and left a suicide note which was beside her body when he found her in bed on the morning of 21 January 2008. The hand written note consisted of ten pages. The first page was headed "this is my will and testament" and bore the date 20 January 2008. The document was in the handwriting of the deceased, and was signed by her. A typewritten copy of that first page is attached to this judgment. It is that document which is sought to be declared valid as the deceased's will. The remaining hand written pages of the document

contain some song lyrics quite unrelated to, and not having any characteristics of, a testamentary disposition.

[3] The first requirement of s 14(1) is that the document appears to be a will. The document here is headed as a will, and contains a disposition of the deceased's property. The circumstances in which it was found suggest that it was intended by the deceased as an expression of her wishes to be given effect following her death. It accordingly meets the requirements of s 8(1) of the Act that it be a document made by a natural person which disposes of the property of that person when she dies.

[4] The second requirement of s 14(1) is that the document does not comply with s 11, which requires that the will be signed and witnessed by at least two witnesses. The document meets the requirement that it be signed, but it is not witnessed. It therefore does not comply with s 11.

[5] The third requirement of s 14(1) is that the document came into existence in or out of New Zealand. It is clear from the evidence that this document was written in Adelaide.

[6] Under s 14(2) the Court may make an order declaring the document valid if it is satisfied that the document expresses the deceased's testamentary intentions. I am satisfied from the evidence, and the nature of the document, that it does. The document expresses in clear terms a wish to leave money to Mr Cessford. The exact disposition of material possessions is less clear, but the intention that there be a disposition of those is clear. The reference to funeral and cremation makes it clear that the intended dispositions were to take effect following death. The circumstances indicate that there could have been no subsequent change of intention.

[7] The remaining question is the appropriate procedure. This application has been made without notice. I have, in earlier minutes, addressed the procedural issues. In response to those earlier minutes, further inquiries have been made of all of those persons who would be entitled to benefit if the will were not declared valid. The deceased had no previous will, so the appropriate inquiry has been as to those persons who would be entitled to succeed on an intestacy. The evidence establishes

that those entitled to succeed, having regard to the deceased's family circumstances, would be the deceased's surviving de facto partner and her mother. The de facto partner, Mr Cessford, is the applicant in this proceeding. The consent of the deceased's mother, Mrs M I Macneil, has now been obtained. The consent form records that Mrs Macneil has received independent legal advice on this consent and the consequences resulting therefrom. In those circumstances, I am now satisfied that the order sought may properly be made on a "without notice" application. I am satisfied, in terms of r 7.46 of the High Court Rules, that the application affects only the applicant and Mrs Macneil, who has now consented to the making of the order. Accordingly, no purpose would be served by requiring the application to be served on any party, and I am satisfied that the interests of justice require the application to be determined on a "without notice" basis.

[8] There will be an order declaring valid, as the last will of the deceased, the first page of the document marked "B" annexed to the affidavit of Michael Keith Cessford sworn on 2 December 2008, a typewritten copy of which is annexed to this judgment.

Solicitors: C & F Legal Limited, Nelson, for Applicant

"A D MacKenzie J"

This is my Will and Testament 20.1.08

Any money and financial matters to be left solely to Michael Keith Cessford – 14 Marston Rd
I give solely to him – I sign over any papers to him alone and money left and our joint accounts are
all his – This is my wish.

Any other wishes I leave are this:-

No funeral or ceremonies

I wish for cremation and no head stone.

I leave my material possessions to whoever would like them – you can work that out amicably

I only hope that you will listen to the Dixie Chicks CD that I leave in the stereo for that is were I am
and I choose to leave this god forsaken world

That is my wish

I have no regrets

I no longer wish to be part of this world

Therese Macneil