

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

CIV 2009-476-000241

IN THE ESTATE OF:

FRANCES LORRAINE HARRINGTON

Hearing: (On Papers)

Judgment: 22 March 2010

JUDGMENT OF FOGARTY J

[1] In February 2009 Mrs Frances Lorraine Harrington learned that she had terminal cancer. She was admitted to Christchurch Hospital on 13 March. She had earlier made a will dated 27 March 1996 which divided the residue after debts among her surviving grandchildren. While Mrs Harrington was still at Christchurch Hospital her sister, Mrs Valerie Thornacroft, drew up a will which would provide that Mrs Maree Anne Milliken, the deceased's only child and her two children, would receive the residue of the estate. This will was executed.

[2] On 27 March her daughter drew up a new document and it was executed by Mrs Harrington in the presence of two witnesses, a Justice of the Peace, Mr G D Thomas, and a social worker, Ms Lydia Brass. The most recent will just referred to was destroyed in the presence of these witnesses.

[3] The last document is headed "**MY WILL**". It provides:

This is the last Will and Testament of me FRANCES LORRAINE HARRINGTON. I am of sound mind.

My share in the Australian property at Inland Way, North Ar Cove, NSW. [Lot 1219/9940]. Is to be transferred to my daughter MAREE ANNE MILLIKEN.

I gift my grandchildren, CARL MATHEW MILLIKEN & ALESHA NICOLE MILLIKEN, \$10,000 (ten thousand) each, from the proceeds of my estate.

All remaining monies from the sale of my house and property at 99 Princes Street, Ashburton, the sale of my car and any money held under my name in the ANZ Bank are to go to MAREE ANNE MILLIKEN.

It is my wish for CARL & alesha TO CHOOSE ANYTHING THEY WOULD LIKE FROM MY GOODS AND CHATTELS AT 99 Princes Street. When this is done, my friends ZAIDEE and CHRIS and my relations may do likewise.

It is also my wish that my daughter MAREE & her husband JOHN MILLIKEN, at their discretion, will financially contribute towards CARL & ALESHA'S futures, when the time is right.

Signed: "*F. L. Harrington*"

Frances Lorraine Harrington

Date: "*27 March 2009*"

Witnessed by: "*Lydia Brass
Social Worker
Christchurch
Lydia Brass*"

"*Gerard Thomas JP
Revenue Manager
Christchurch Hospital*"

[4] This document does not comply with the Wills Act 2007 s 11(4)(b). Section 11 provides:

11 Requirements for validity of wills

- (1) A will must be in writing.
- (2) A will must be signed and witnessed as described in subsections (3) and (4).
- (3) The will-maker must—
 - (a) sign the document; or
 - (b) acknowledge that a person directed by the will-maker signed the document in the will-maker's presence.
- (4) At least 2 witnesses must—
 - (a) be together in the will-maker's presence when the will-maker complies with subsection (3); and
 - (b) each state on the document, in the will-maker's presence, that the witness was present when the will-maker complied with subsection (3); and
 - (c) each sign the document in the will-maker's presence.

[5] Mr Thomas has sworn an affidavit in which he deposes that Mrs Harrington signed the document in his presence and in the presence of Ms Lydia Brass and both of them then signed the will as witnesses in the presence of each other and in the presence of the deceased.

[6] Parliament has enabled the Court to deal with situations such as this. Section 14 of the Wills Act provides:

14 High Court may declare will valid

- (1) This section applies to a document that—
 - (a) appears to be a will; and
 - (b) does not comply with section 11; and
 - (c) came into existence in or out of New Zealand.
- (2) The High Court may make an order declaring the document valid, if it is satisfied that the document expresses the deceased person's testamentary intentions.
- (3) The Court may consider—
 - (a) the document; and
 - (b) evidence on the signing and witnessing of the document; and
 - (c) evidence on the deceased person's testamentary intentions; and
 - (d) evidence of statements made by the deceased person.

Section 14(1)(b) applies.

[7] These proceedings have been served on Mrs Thornacroft. She has had independent legal advice. She consents to the application being made to declare this document to be the valid will, and does not wish to contest its contents.

[8] I am satisfied, on the evidence recorded in this judgment, that the document expresses the deceased's testamentary intentions.

[9] The document is declared the valid will.

[10] There is an application for grant of administration of the will by the daughter of Mrs Harrington, the deceased. It is entirely appropriate that she be made the administrator. That application is also granted as moved in the notice of application dated 20 May 2009.

Solicitors:
Anderson Sandford & Allen, Christchurch (Counsel Acting: M J Callaghan, Christchurch)