

SUPREME COURT OF QUEENSLAND

CITATION: *Re Giles* [2022] QSC

PARTIES: **IN THE WILL OF MAVIS JEAN GILES DECEASED**

FILE NO/S: BS494 of 2022

DIVISION: Trial

PROCEEDING: Application filed 11 January 2022

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 14 February 2022

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Boddice J

ORDER: **Orders in terms of the draft.**

- [1] Phillip Edward Giles makes application for a copy of the last Will of Mavis Jean Giles, deceased, dated 14 June 1990, to be admitted to probate until the original or a more authenticated version is located. It is proposed the application be determined without an oral hearing.
- [2] The deceased died at an Aged Care Facility on 7 August 2021. The deceased left an estate in Queensland.
- [3] The deceased executed a Will dated 14 June 1990.
- [4] By that Will, the deceased named as executor of her estate Francis Edward Giles, her husband, and in the event he did not survive the deceased, the applicant.
- [5] The deceased's husband died on 1 August 1991. The deceased was survived by her two children, the applicant and a daughter who resides in Victoria. They are the only interested persons in the deceased's estate.
- [6] The deceased's Will distributed her estate to the applicant and her daughter in equal shares.

- [7] A search of the relevant records has been unable to locate the original Will executed by the deceased on 14 June 1990.
- [8] The deceased and her husband both executed Wills on 14 June 1990. When the deceased's husband died on 1 August 1991, as their assets were all owned jointly, a grant of probate of his Will was not necessary.
- [9] At the time of his death, the applicant located copies of his father's Will, the deceased's Will, and their marriage certificate in a safe custody box at the deceased's home. Neither the original of the deceased's Will or her husband's Will could be located at that time. However the applicant was told by the deceased that the originals were being held by a solicitor.
- [10] The witnesses to the deceased's signature in the Will were employees of a solicitor's practice. That practice no longer exists and the solicitor has not held a practising certificate for several years. The Queensland Law Society advised the safe custody documents held by that practice were transferred to another firm of solicitors. Enquiries of that firm established that no documents are held in safe custody on behalf of either the deceased or her late husband.
- [11] Other enquiries have also been unable to locate the original Will, or any other Will executed by the deceased.
- [12] Probate may be granted on a copy of a Will, if five criteria are met on the evidence. Those criteria are that the evidence establishes there was an original Will, that the original Will by its terms revoked all previous Wills, that the terms of that Will are clear, that there was due execution of that Will and that the presumption that the original cannot be produced because the deceased destroyed it thereby revoking it is overcome.
- [13] All five criteria are met in the present case.
- [14] The copy of the Will establishes there was an original Will, which was duly executed. The original Will, by its terms, revoked all previous Wills and disposed of the deceased's estate in clear terms. The evidence further establishes that the original Will does not appear to have ever been in the possession of the deceased and, accordingly, there was no opportunity for the deceased to have destroyed that Will,

intending thereby to revoke the Will. The evidence also establishes that at no stage did the deceased indicate to the applicant or any other person any intention to revoke the Will she executed at the same time as her husband's Will.

- [15] As all five criteria are met, probate ought to be granted of a copy of the Will of the deceased dated 14 June 1990, until the original Will or a more authenticated version is located and provided to the Registrar.
- [16] The only other beneficiary of the deceased's estate has indicated her consent to the making of such an order, as well as an order that the applicant's costs of the application be paid out of the estate of the deceased. In those circumstances, there is no need for an oral hearing.
- [17] I make orders in terms of the draft, which I initial and place with the papers.