

CITATION: *In the Estate of Darvodelsky* [2019]  
NTSC 20

PARTIES: IN THE ESTATE OF DARVODELSKY

ON REFERENCE from the Registrar of  
the Supreme Court of the Northern  
Territory

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory  
jurisdiction

FILE NO: 28 of 2018 (21912509)

DELIVERED ON: 27 March 2019

DELIVERED AT: Darwin

JUDGMENT OF: Grant CJ

**CATCHWORDS:**

SUCCESSION – WILLS, PROBATE AND ADMINISTRATION – THE  
MAKING OF THE WILL – PROBATE AND LETTERS OF  
ADMINISTRATION

Reference by the Registrar pursuant to s 17(2)(c) of the *Administration and Probate Act 1969* (NT) – whether probate should be granted – order that the Registrar may issue probate of the Will.

*Administration and Probate Act 1969* (NT) s 17  
*Wills Act 2000* (NT) s 8, s 13

Judgment category classification: B  
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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*In the Estate of Darvodelsky* [2019] NTSC 20  
No 28 of 2018 (21912509)

**IN THE ESTATE OF  
DARVODELSKY**

**ON REFERENCE FROM THE  
REGISTRAR OF THE SUPREME  
COURT OF THE NORTHERN  
TERRITORY**

CORAM: GRANT CJ

REASONS FOR ORDER

(Delivered 27 March 2019)

- [1] This is a reference by the Registrar pursuant to s 17(2)(c) of the *Administration and Probate Act 1969* (NT). That section provides relevantly that the Registrar shall not, without an order of the Court, issue probate of the will of a deceased person in any case in which it appears to the Registrar to be doubtful whether the probate should be granted.
- [2] The deceased died on 24 June 2018. The deceased was domiciled in Alice Springs and left assets in this jurisdiction. A grant of probate is sought in relation to a Will executed by the deceased on 23 June 2018, one day before his death. The cause of death is recorded as bowel cancer with liver and bone metastases and recurrent deep vein

thrombosis. The deceased was last seen by medical practitioner on 15 June 2018, nine days before his death. There is no material before the Court as to the deceased's legal capacity at the time the Will was executed.

[3] The Will directs that the whole of the deceased's estate pass to Catherine Maree Vero, his wife of 3 ½ years. The Will names the wife and the deceased's brother as executors. The brother has renounced appointment. The wife is the applicant for the grant of probate. The deceased was an engineer, as is his wife. The deceased did not have children. The deceased is survived by the applicant wife, the brother who has renounced appointment, a niece and a nephew. There is no material before the Court concerning whether the deceased was survived by his parents.

[4] The Affidavit of Assets and Liabilities estimates the value of the estate at \$1,534,239.

[5] The cover page of the Will carries the logo and contact details of a Melbourne law firm. The Will consists of five loose pages which appear never to have been stapled. The Will was executed by the deceased before Cameron Osborne and Carol Osborne, both of whom ordinarily reside in New South Wales and whose relationship to the deceased and the applicant is not apparent on the materials. Only the last page of the Will was executed by the deceased and the witnesses.

There is nothing before the Court to suggest that the Will may have replaced any previous testamentary instrument and, if so, the content of any previous testamentary instrument.

- [6] The Will, but not the Affidavit of Assets and Liabilities, makes reference to a family trust.
- [7] The Registrar has sought an order as to whether probate should be granted in the absence of:
- (a) evidence as to the testamentary capacity of the deceased at the time he executed the Will;
  - (b) evidence directed to excluding the possibility of undue influence in the execution of the Will; and
  - (c) an affidavit of plight and condition.
- [8] The reference queries whether evidence is required from the witnesses in relation to the circumstances in which the Will was executed and confirming that the Will presented in the application is the true Will; medical evidence from the deceased's medical practitioner in relation to capacity; and evidence from the Melbourne solicitors in relation to the drafting of the Will and the source of instructions.
- [9] Section 8 of the *Wills Act 2000* (NT) prescribes how wills should be executed. So far as is relevant for these purposes, that section provides that a will is not valid unless: it is in writing and signed by the testator;

the signature is made or acknowledged by the testator in the presence of two or more witnesses; and at least two of those witnesses attest and sign the will in the presence of the testator. There is no requirement that every page of the will must be signed. So far as revocation is concerned, s 13 of the *Wills Act* provides that a will may be revoked by a later will.

[10] The formal requirements for the application for probate have been satisfied. There is proof of death, an affidavit attesting to the original Will, and an inventory of the deceased's assets and liabilities. The original Will has been lodged with the Court. The Will does not contain any indicia suggesting another testamentary document was attached or that any attempt was made at revocation by destruction. The pages of the Will are numbered consecutively. There is nothing to suggest that the Will has been damaged or tampered with, or is otherwise not in the same state as it was when executed.

[11] The Will contains an attestation clause raising a presumption of due execution. The applicant has deposed that she is able to identify the Will on the basis that she was present at the time it was executed and recognises the signature of the testator. Although it is preferable, where a will consists of more than one page, that the sheets should be fastened before execution, there is nothing contrary to the applicant's deposition to suggest that the deceased did not consider each page as part of the one document.

[12] Beyond the fact of his illness, there is no reason to believe that the deceased lacked testamentary capacity or was otherwise incapable of making a will. Neither dementia nor any other condition which might give rise to a question concerning capacity is listed as a cause of death or a condition from which the deceased was suffering at the time of his death.

[13] The intention to make the application for probate was notified in accordance with the statutory requirements in the editions of the *NT News* and the *Centralian Advocate* published on 27 July 2018. No caveats have been lodged. There is no challenge to the validity of the Will on the basis of a failure to conform with formalities, a lack of capacity on the part of the testator, or undue influence on the testator by relatives or other persons. No application has been made contesting the validity of the Will or its eligibility for probate. The deceased's brother has formally renounced probate with no suggestion of a concern about the contents of the Will, any previous will, or the succession of the applicant.

[14] While the reference was properly made, I order that the Registrar may issue probate of the Will.

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