

[1] Margaret Frances Read died at Auckland on 2 July 2011.

[2] Mrs Read is survived by her separated husband William Thomas Read and her three children, Marcus Phillip Thomas Read, Vincent William Read and Leah Catherine Read.

[3] The testamentary documents in existence are a previous signed Will of 23 November 2007, a signed letter of 17 May 2011 from Mrs Read attaching pages from her previous Will with certain changes marked thereon and a latest Will unsigned and undated which was prepared by her solicitor, Mr Clark, on her instructions. Finally there is a letter signed by Mrs Read on 1 July 2011, the day before her death confirming that her last unsigned Will was her final Will.

[4] Application is now made for an order under s 14(2) of the Wills Act 2007 (the Act) declaring the unsigned draft Will prepared by her solicitor on her instructions as Mrs Read's last will and testament.

[5] Section 14 of the Act provides as follows:

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.

[6] Section 14(3) confirms the Court may take into account a number of factors in considering whether or not to declare a document valid as a Will. These include the document itself, which in this case is in the form of the Will; the evidence as to signing and witnessing of the document (which in this case is not applicable); evidence as to the deceased's testamentary intentions; and evidence of any statements made by the deceased person. I turn to consider those factors in more detail.

[7] Mr Clark has deposed that he has acted for Mrs Read since 2006. In 2007 she instructed him to prepare a Will which she signed on 23 November 2007. Mrs Read suffered from emphysema. Towards the end of her life, wherever she went she had to take oxygen bottles with her.

[8] Mr Clark says that in May 2011 she contacted him with instructions to change her Will. Mr Clark has annexed a letter of 17 May 2011 written by Mrs Read to him asking him:

Could you please make alterations to my will as noted on enclosed pages.

[9] Her letter enclosed a number of photocopied pages of the existing Will with, I infer, her handwritten amendments on them. The proposed changes increased a bequest to her sister, repaid \$25,000 to a children's trust which Mr Clark clarified with the deceased was to be by way of repayment of a loan made to her by her sister Catherine Hall; halved the bequest to be paid to her separated husband, increased a bequest to her son Marcus and altered the bequests of specific sums to her grandchildren. She also altered the distribution of the residue of her estate between her children.

[10] Mr Clark deposes that he drafted a new Will for her to reflect those instructions. He then telephoned her to discuss it with her and to advise her that it was ready for her to sign. Mr Clark recalls that Mrs Read told him she had people staying with her, or was expecting someone to visit and would come in and see him soon to sign her Will. In a supplementary affidavit Mr Clark has confirmed that,

during the course of that telephone discussion on 24 May 2011, Mrs Read made some further minor changes. She instructed Mr Clark that the repayment of \$25,000 was to be by repayment of a loan her sister Catherine Hall had given her and that she also wanted to change the bequests to the grandchildren by increasing them from \$30,000 to \$35,000 each. Mr Clark confirmed those amendments with her and was expecting Mrs Read to attend to sign the Will.

[11] However, unfortunately before she could do so, she became ill and was admitted to hospital where she died on 2 July without being discharged.

[12] Importantly, however, on 1 July 2011, the day before she died, Mrs Read was visited by Karen Lesley Hall, a niece. At Mrs Read's instructions Ms Hall drafted a letter for Mrs Read which Mrs Read signed in Ms Hall's presence, and which she witnessed. The letter is in the following terms:

I Margaret Frances Read request that my last unsigned will is my final will

It is then signed by Mrs Read and witnessed by Karen Lesley Hall.

Mrs Read's son Marcus Read has given evidence to confirm that he is certain she intended to attend her solicitors if she was able to do so but she made it clear to him in front of Karen Clarke, her husband William Read and her sister Catherine, that her last wishes in her unsigned Will were to be carried out. Her sister, Catherine Vera Hall, has also sworn an affidavit confirming that was the position.

[13] The document that Mr Clarke prepared is in all respects in form a conventional Will containing all the terms one would usually expect to see included in a Will. The reason that it is not valid in terms of s 11 of the Act is that it is not signed or witnessed in the prescribed manner.

[14] I am satisfied, given the evidence before the Court, that the unsigned document reflects the testamentary intentions of the deceased: *Re Hickford Deceased*¹ and further that the reason the deceased Mrs Read did not sign the Will

¹ *Re Hickford Deceased* HC Napier CIV-2009-441-000369, 13 August 2009.

was simply that, although she intended to, she was not able to do so before her death because of her physical condition.

[15] I am also satisfied that the unsigned Will reflected her testamentary intention as at the date of her death. It reflects the instructions she gave Mr Clark when she initiated the changes to her Will by the handwritten amendments. She then subsequently clarified and made further minor adjustments to those instructions during the telephone discussion with Mr Clark on 24 May shortly before her death.

[16] The only reason she did not attend and sign the Will was that initially she was too busy and then her physical infirmity overtook her. That she was well aware of the Will and the changes she had made is confirmed by the fact she raised the issue of the Will in the presence of her close family immediately prior to her death and went to the extent of asking her niece to dictate a letter for her to sign to confirm that the document was to be regarded as her Will.

[17] Finally I record that the relevant and interested beneficiaries have received advice from Mr Clark as to the background to the preparation of the unsigned Will and have confirmed their consent.

Order

[18] I make an order under s 14(2) of the Wills Act 2007 declaring the draft Will annexed to Alan John Clark's affidavit of 24 October 2012 as the last Will and Testament of Margaret Frances Read.

Venning J