

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

**CIV-2013-485-8488
[2014] NZHC 548**

IN THE MATTER of the Wills Act 2007

In the Estate of DAMIAN JOHN MURPHY
(DECEASED)

CLARE MURPHY
Plaintiff

Hearing: On the papers
Counsel: G F Kelly
Judgment: 21 March 2014

JUDGMENT OF MACKENZIE J

*I direct that the delivery time of this judgment is
4.50 pm on the 21st day of March 2014.*

Solicitors: Greg Kelly Law Limited, Wellington

[1] This is an application for an order under s 14 of the Wills Act 2007 (the Act) declaring a note left by the deceased valid as the will of the deceased.

[2] The proceeding was commenced as an originating application under Part 18 of the High Court Rules, and orders for service on all parties liable to be affected were made. Service has been effected and there is now no opposition to the order sought. I am therefore able to deal with the matter on the papers.

[3] The relevant circumstances are set out very briefly in the affidavit of Clare Murphy, the deceased's widow. She and the deceased were married in England in October 1992. They have one daughter, who is aged 15 years. The family moved to New Zealand in 2006. The deceased also has a son, who was born in July 2006 and who lives with his mother in England.

[4] The deceased committed suicide in April 2013. He left a handwritten note which was found with his body. It is that note which is sought to be declared valid. The top of the note is headed "LAST WILL AND TESTAMENT" and is dated 13 April 2013.¹ It leaves the entire estate to the applicant. It then goes on to describe the property involved.

[5] The note is signed. The applicant confirms that the note and signature are in the deceased's handwriting. It appears to be a will, but does not meet the requirements of s 11 of the Act because it is not witnessed. It falls within the scope of s 14. The Court may make an order declaring the document valid, if it is satisfied that it expresses the deceased's testamentary intentions. I am satisfied that it does. It was made contemporaneously with his death, so that there is no possibility that his intentions may have changed after signing the note. The expression of his testamentary intentions is both clear and rational.

¹ Also on the same sheet of paper is a personal note to the deceased's widow. That note is not included in the present application.

[6] There will be an order declaring valid the original of that part of the note dated 13 April 2013, headed LAST WILL AND TESTAMENT, a copy of which is annexed and marked A to the affidavit of Clare Murphy sworn on 26 June 2013.

“A D MacKenzie J”