Update
Wills and Succession

Service 77 — November 2021

New Zealand Forms and Precedents

Selected wills precedents from *New Zealand Forms and Precedents* have been included in this service.

Case commentary

Chapter 3 — Testamentary capacity — onus of proof

In *Nelson v Codilla* [2021] NZHC 1958, the deceased spoke and wrote little English and had had a stroke. The deceased had a number of live-in caregivers, and when he made his last will in 2016, he left his estate to his final carer. Gordon J held that on the balance of probabilities, the will-maker did have testamentary capacity. See [3.2] and [3.12].

Chapter 4 — Formal requirements — validation of wills by High Court — s 14, Wills Act 2007

In *Re Towler* (2021) 435 Aotea MB 37 (435 AOT 37), Judge Harvey emphasised that the High Court had jurisdiction to declare a will valid under s 14 of the Wills Act 2007 and that the Māori Land Courts were not the proper forum to validate a will. See [4.7.1].

Chapter 4 — Formal requirements — successful validation of wills by High Court — s 14, Wills Act 2007

Successful recent cases of validation of wills under s 14 include:

- *Re Baxter* [2021] NZHC 2289
- *Re Phillip* [2021] NZHC 1175
- *Re Carroll* [2021] NZHC 1023
- *Re Redpath* [2021] NZHC 1976
- *Re Nelson* [2021] NZHC 1431
- *Re Hyde* [2021] NZHC 1255

See [4.7.3].

Chapter 4 — Formal requirements — unsigned codicils validated — s 14, Wills Act 2007

In *Re Latham* [2021] NZHC 1439 and *Re Leitch* [2021] NZHC 1637 unsigned codicils were validated. See [4.7.3].

Chapter 4 — Formal requirements — letter of instruction validated — s 14, Wills Act 2007

In *Re Bowman* [2021] NZHC 1991 a letter of instruction was sought to be declared valid as a will. The High Court considered the relevant document was the document that

recorded the instructions of the deceased in preparation of making a will, which was prepared and signed by both an estate manager and solicitor. See [4.7.3].

Chapter 5 — Revocation of will by another will

In *Re Bricknell* [2021] NZHC 1463 the will-maker made a New Zealand will in 2009 and later made another will in South Africa in 2017. Hinton J upheld the Registrar's decision to refuse a grant of probate of the New Zealand will because the South African will had revoked it. See [5.2.5].

Chapter 5 — Revival of wills — s 17, Wills Act 2007

In *Re Bricknell* [2021] NZHC 1463 the will-maker made a New Zealand will in 2009 and later made another will in South Africa in 2017. Hinton J considered whether an email might be validated as a testamentary disposition in order to revive the New Zealand will. However, since the email did not comply with s 11 and no application had been made under s 14, the subject of revival was not explored further. See [4.7.3] and [5.4].

Chapter 6 — Correction of wills — s 31, Wills Act 2007

In *Re Griffen* [2021] NZHC 2515, a gift of a property of a Paihia residential address was accompanied by a legal description of another owned property in Auckland. The Court made an order under s 31 to correct the clerical error in the will. See [6.2].

Chapter 6 — Correction of wills — s 31, Wills Act 2007

In *Re Redpath* [2021] NZHC 1976, s 31 was successful in changing two minor clerical errors. See [6.2].

Chapter 6 — Correction of wills — s 31, Wills Act 2007

In *Stokes v Stokes* [2021] NZHC 2254 the will-maker left his residual estate to his "nephews" and it was contended that the expression was used instead of "the children of my brother David" ("the first brother"). The High Court held that the will-maker had intended to use the term "nephews" to refer only to the children of the first brother. The High Court made an order under s 31(1)(b) to correct the will. See [6.2] and [6.3].

