



For a Better Result.....

Can a Text Message Really Be Held to Be a Will?

Pursuant to recent amendments to the Succession Act 1981, which is the legislation concerning all Wills and Estates in Queensland, a document could be upheld as a Will by the Court if the Court is satisfied as to certain things.

In the recent decision re Nichol; *Nichol v. Nichol & Anor [2017] QOC 220* the Court essentially held that an un sent text message by the deceased was a Will.

The Court had to consider a competition between an application for Letters of Administration on Intestacy (i.e. no Will) and an application that the text message be upheld as the Will.

In order for those propounding the text message to be of a Will it was also necessary for them to establish that the deceased had testamentary capacity at the time of creating the “document”.

Essentially the law held in an earlier decision of *Banks v. Goodfellow* that for there to be testamentary capacity the testator must be aware of and appreciate what he is doing at the time of making the document.

Those propounding that this was not a Will submitted that the deceased never sent the text message which showed that he did not make up his mind (a necessary element). Conversely, the other side said that because he wrote the words “my will” in the text message this showed such intention.

Ultimately the Court accepted the position that the text message did indicate his testamentary intentions. Although the message also did not appoint an executor this did not dissuade the Judge from concluding that it was the deceased’s intention the text message operate as his Will and was not satisfied that although the message was saved as a draft and not sent that he did not wish it to be operative as a Will.

With respect we disagree with the Judge’s position.

As this is a fairly recent decision we shall see if it appealed and what the outcome of such an appeal might be.

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