



Friday, 12 July 2024

Weekly Wills, Estates and Superannuation Law

A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Wills Estates and Superannuation Law

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Executive Summary (One Minute Read)

Dryandra Investments Pty Ltd v Hardie (WASC) - Court ordered that the appointor of a trust who had lost capacity be replaced

In the Estate of Mary Ellen Robbie (ACTSC) - anomalies in a will were satisfactorily explained, and the Court declared it the will of the deceased as an informal will under s11A of the *Wills Act 1968* (ACT)

In the estate of Dora Marleny Rodriguez Navarro (ACTSC) - the Court ordered under s11A of the *Wills Act 1968* (ACT) that a video a deceased had made on her phone shortly before undergoing surgery in Peru constituted her valid last will

HABEAS CANEM

The scent on the breeze



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Summaries With Link (Five Minute Read)

Dryandra Investments Pty Ltd v Hardie [2024] WASC 248

Supreme Court of Western Australia

Master Russell

Succession - an 82 year old woman suffered from dementia caused by Alzheimer's disease - she became the appointer and guardian of a trust after her husband's death - the trustee of the trust sought orders under s90 of the *Trustees Act 1962* (WA) that the Court approve and assent to variations to the trust deed to ameliorate the adverse consequences of the woman's loss of mental capacity, or alternatively that the Court replace the woman as appointor and guardian in its inherent jurisdiction - an enduring attorney of the woman also sought that the Court authorise the making of a codicil to the woman's will - an independent legal practitioner was appointed the woman's guardian ad litem for the purposes of both applications - held: the Court was not satisfied it had power under s90 to approve the variations to the trust deed - the Court must be satisfied under that section that the person on whose behalf the approval is being sought has a direct or indirect interest 'under the trusts', who by reason of incapacity is incapable of assenting - the Court is not being asked to assent to the variation sought on behalf of the woman as a beneficiary and her consent was required in her capacity as guardian - the Court was satisfied it had power in its inherent supervisory jurisdiction to replace the woman as guardian and appointor, as that was necessary to secure the proper administration and due execution of the trust - the orders sought regarding the codicil were therefore no longer required.

[Dryandra Investments Pty Ltd](#)

[From Benchmark Friday, 12 July 2024]

In the Estate of Mary Ellen Robbie [2024] ACTSC 208

Supreme Court of the Australian Capital Territory

Elkaim AJ

Informal wills - a deceased died leaving a will that gave her estate to her three daughters equally - the will had some unusual features, namely: (1) the witness signatures were on a separate piece of paper attached to the document over the part of the form where the witnesses' signatures would normally appear; (2) under the heading "Gifts" was written "See attached list", and no list was attached; (3) the deceased appeared to have used different pens in the completion of the document; (4) a different pen was used to add a name of a residual beneficiary; and (5) a witness signature had been crossed out and a different signature had been inserted - these features caused the Registrar to refuse to make a grant of probate, and to seek clarification of a number of matters - two of the daughters sought a declaration under s11A of the *Wills Act 1968* (ACT) that the purported will was the will of the deceased as an informal will - held: the Court accepted evidence regarding a change in intended witnesses, who had been employees of a retirement home - the absence of the "attached list" had also been satisfactorily explained, as the list had been maintained on a computer, and there were no items remaining on the list to be distributed by the time of the deceased's death - the Court accepted evidence of one of the daughters that she recognised her mother's handwriting in each of the

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places where a different pen was used - there were reasonable explanations for all of the anomalies - no other statements of testamentary intentions had been found - the terms of the will reflected what would have occurred on intestacy and complied with the usual expectations of a deceased leaving her estate to her children in equal shares - the Court was satisfied that the deceased had intended the document to be her will - the Court declared that the document was the deceased will under s11A.

[In the Estate of Mary Ellen Robbie](#)

[From Benchmark Friday, 12 July 2024]

In the estate of Dora Marleny Rodriguez Navarro [2024] ACTSC 211

Supreme Court of the Australian Capital Territory

Baker J

Succession - a woman died from complications of surgery while on holiday in Peru - she had not made a will, but her husband found a video on her phone that the deceased had made while in hospital waiting for the surgery, in which she stated that she wanted to give her estate to the husband so that the her daughters could have a good education - the husband sought orders under s11A of the *Wills Act 1968* (ACT) that the video constituted the deceased's valid last will and that the transcript of the will be annexed to the grant of representation as a true copy - held: s11A relevantly provides that a document purporting to embody testamentary intentions shall, notwithstanding that it has not been executed in accordance with the formal requirements, constitute a will of the deceased person if the Court is satisfied that the deceased person intended the document to constitute his or her will - a video is a "document", being a "record of information ... from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else", as defined in s144 and the Dictionary of the *Legislation Act 2001* (ACT) - it was clear that the words the deceased has spoken in video purported to embody the deceased's testamentary intentions, and the deceased had personally recorded her intention as to how to distribute the entirety of her estate - the circumstances in which the video was recorded (shortly before the deceased was to undergo surgery) clearly indicated that the deceased intended the video to constitute her will, without any further action to be taken on her part - there was no evidence of any other document which contradicted the deceased's apparent testamentary intention as expressed in the video, that the recording itself operate as her will - orders made as sought.

[In the estate of Dora Marleny Rodriguez Navarro](#)

[From Benchmark Friday, 12 July 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Moody v Netchoice (SCOTUS) - Lower court decisions upholding State statutes prohibiting social media companies from moderating content posted by third parties were reversed for failure to conduct proper First Amendment analysis

Summaries With Link (Five Minute Read)

Moody v Netchoice 603 US ____ (2024)

Supreme Court of the United States

The States of Florida and Texas enacted legislation that prohibited internet platforms from moderating third-party content based on content. The Supreme Court found serious First Amendment implications that the lower courts failed to properly consider. The cases were remanded to the courts below. The Court cited to *Miami Herald Publishing Co v Tornillo*, 418 US 241 (1974), where it was held that a Florida statute requiring newspapers to offer a right of reply violated the First Amendment because it consisted of compelled speech. Compelled speech can violate the First Amendment as much as suppression of speech. The Court said that government cannot meddle in speech by claiming that it is improving the marketplace of ideas. Here, the Court concluded that states were not likely to succeed in prohibiting the platforms from enforcing the platforms' own content moderation rules. The Court said that the States' attempt to better balance the mix of viewpoints on the internet by restricting content moderation amounted to an interference with speech decisions made by the private platforms. The Court added that a State cannot prohibit speech to rebalance the speech market. Inasmuch as the content moderation practices amounted to speech decisions by the platforms, the government was not free to enact laws that infringed those private speech rights.

[Moody](#)



Poem for Friday

Iceland

By Jonas Hallgrímsson (1807-1845)

Charming and fair is the land,
and snow-white the peaks of the jokuls [glaciers],
Cloudless and blue is the sky,
the ocean is shimmering bright,
But high on the lave fields, where
still Osar river is flowing
Down into Almannagorge,
Althing no longer is held,
Now Snorri's booth serves as a sheepfold,
the ling upon Logberg the sacred
Is blue with berries every year,
for children's and ravens' delight.
Oh, ye juvenile host
and full-grown manhood of Iceland!
Thus is our forefathers' fame
forgotten and dormant withal.

Jonas Hallgrímsson was born in Iceland on 16 November, 1807. He is a revered figure in Icelandic literature, writing in the Romantic style. His love of the Icelandic people and country side and pride in the national identity comes through his poetry. He was a promoter of the Icelandic Independence Movement. He was employed for a time by the sheriff of Reykjavik as a clerk. He studied law at the University of Copenhagen. He also worked as a defence lawyer. He founded the Icelandic periodical Fjölfróðingur first published in 1835. He died on 26 May 1845, after slipping on stairs and breaking his leg, the previous day. He died of blood poisoning aged 37 years. His birthday each year is recognised as the Day of the Icelandic Language.

Ég bið að heilsa, words by Jónas Hallgrímsson, composition by Ingi T. Lárusson
<https://www.youtube.com/watch?v=6OqbfGSJDUc>

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