

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2020-404-2376
[2020] NZHC 3337**

IN THE MATTER of the Estate of ROBERT LEONARD
NEWTON formerly of 31 Mawney Road,
Henderson, Auckland, Deceased

AND

IN THE MATTER of Section 18 of the Wills Act 2007

BETWEEN ANGELA ROSEMARY NEWTON
Plaintiff

AND CAROL JUNE NEWTON
First defendant

BRIAN JOHN NEWTON
Second defendant

Hearing: On the papers

Appearances: N J Craig for the plaintiff
No appearance for the first or second defendants

Judgment: 16 December 2020

JUDGMENT OF PALMER J

*This judgment was delivered by me on Wednesday 16 December 2020 at 3.00pm.
Pursuant to Rule 11.5 of the High Court Rules.*

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Registrar/Deputy Registrar

Solicitors:
Davenports West Lawyers, Auckland

[1] Robert Newton and Angela Newton were in a de facto relationship from early 1991. Robert had two children, Brian Newton and Carol Newton. Angela also had two children, Tia Patten-Williams and Annaliese Patten-Williams. On 22 October 1992, Robert and Angela both signed wills, drafted by their solicitors on their instructions. They each left their estate to the other if they survived by 14 days. If they did not, the estate was to be divided equally between the four children. Robert and Angela married on 9 January 1998. Robert died on 30 March 2009.

[2] Section 18(1) of the Wills Act 2007 provides that a will is revoked if the will-maker marries. So, under that provision, Robert's 1992 will would have been revoked by the 1998 marriage. But s 18(3) provides that s 18(1) does not apply if "the will does not expressly say that it is made in contemplation of a particular marriage . . . but the circumstances existing when it was made show clearly that it was made in contemplation of a particular marriage" and the marriage that occurs is the contemplated one. If s 18(3) applies, the 1998 will would be valid.

[3] Angela submits s 18(3) applies. She provides an affidavit attesting to the fact that she and Robert did not realise their marriage revoked their wills. They both believed Robert's will would remain in effect during the course of his relationship with her, including if they married, without having to be updated. They were married for over 16 years after the will was signed. Angela applies for an order that the will not be revoked by s 18(1) on the basis s 18(3) applies. She applies for an order that service of the proceedings be dispensed with because all the interested parties, particularly Brian and Carol, have consented in writing to the orders sought.

[4] The evidence, including the mirror provisions of the two wills leaving the estates to all four children if both die, show that Robert's will was made in contemplation that his relationship with Angela would endure and would have the status of marriage. That marriage occurred. I am satisfied it is in the interests of justice that the will is not revoked. I dispense with the need for service and declare the marriage did not revoke the will.