

HIS HONOUR:

1 John Andrew Flanagan died on 18 February 2020.

2 On that day, his neighbour and friend, Antony Robin Herriott, went to his home and
discovered the body. Mr Herriott conducted a search of the home, together with Steven
Collins, and, in one of the drawers of the deceased's desk, located a sealed envelope with the
word 'WILL' appearing in the deceased's handwriting. The envelope contained a
handwritten document entitled 'Last Will and Testament' (**'the document'**).

3 Among other things, the document appointed the plaintiff as sole executor of the deceased's
estate. The document was dated '16 Feb 2019' on the first page, but '16th February [sic]
2020' on the third and final page. The document was in the handwriting of the deceased and
was signed.

4 The matters to which I have referred were deposed to by Mr Herriott.

5 Dr Andrew McDonald deposed that the death certificate stipulated the cause of the
deceased's death as 'ischaemic heart disease'. When last seen by Dr McDonald, the deceased
did not suffer from any medical condition affecting his testamentary capacity and, in the
opinion of Dr McDonald, the medical condition which caused his death would not have
impaired his testamentary capacity.

6 Ms Mitchell brings the present proceeding seeking a grant of probate of an informal will –
namely the document. She deposes to notifying the various beneficiaries who would take on
an intestacy. None have sought to be added as a defendant to the proceeding.

7 Ms Mitchell also deposes concerning the beneficiaries to take if the document be effective.
One is a minor, and her father, by his lawyer, has confirmed that she supports the present
application. The remaining beneficiaries provided their consent to the present application.

8 The evidence in connection with the present application also included two affidavits of
Kiralee Middleton.

9 Notwithstanding the form and title of the document, and the fact that the word 'WILL'
appears on the envelope, the document does not comply with s 7(1) of the *Wills Act 1997*

(Vic) (**‘the Act’**). It was signed by the deceased, but not witnessed. The present question is whether the Court is satisfied that the deceased ‘intended the document to be his or her will’¹. If so, the document may be admitted to probate.

10 The relevant principles are identified in several recent decisions of the Court, including by her Honour Justice McMillan in *Re Merry*.²

11 In the present instance, on the evidence, I am satisfied to the requisite standard that the deceased intended the document to be his will. In that regard –

- (a) the deceased is not known to have had any previous will;
- (b) the document was located in a sealed envelope with the word ‘WILL’ written on the front;
- (c) the language of the document is evidently intended to be testamentary;
- (d) any medical condition suffered by the deceased would not have affected his testamentary capacity;
- (e) the document was in the handwriting of the deceased and was not marked ‘draft’ and the appearance of his signature evinces no equivocation in his intentions;
- (f) it is unknown whether he was aware of the formal requirement to have his will witnessed;
- (g) there is no evidence that there was any influence exerted on the deceased in connection with the making of the document and nor is there anything in the document which suggests other than that he intended it to be dispositive.

12 In the circumstances, I am satisfied that the deceased intended that the document be his will and that it ought to be admitted to probate. I will make the orders sought.

¹ *Wills Act 1997 (Vic)* s 9(1).

² [2021] VSC 564, [9]-[14]. See also, *Fast v Rockman* [2013] VSC 18, *Re Sanders* [2016] VSC 694, *Re Besanko* [2020] VSC 170 and *Re Logan* [2021] VSC 131.