SUPREME COURT OF QUEENSLAND

CITATION:	*Hall v Hall & Hall* [2026] QSC 134
PARTIES:	**NICOLE LEE ANN HALL** (applicant) **v** **SHAWN JOHN DERICK HALL** (first respondent) **RICKY BENJAMINE LENI HALL** (second respondent)
FILE NO/S:	63/26
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Rockhampton
DELIVERED ON:	15 June 2026
DELIVERED AT:	Rockhampton
HEARING DATE:	10 June 2026
JUDGE:	Crow J

ORDER:

1. Pursuant to s 18 of the *Succession Act* 1981 (Qld), the formal execution requirements in s 10 of the Act be dispensed with in relation to the informal will of the deceased, JACQUELINE ANN HALL, a copy of which is in exhibit NH-4 of the Affidavit of Nicole Lee Ann Hall sworn 24 March 2026.

2. It is declared that the informal will of the deceased is her last will and testament and of effect.

3. Subject to the formal requirements of the Registrar, letters of administration with a copy of the informal will annexed issue to the applicant.

4. Pursuant to s 114(3)(a) of the *Land Title Act* 1994 (Qld), the applicant as personal representative of the deceased be registered as the sole proprietor

of the land described as Lot 3 on Registered Plan 158978, title reference 1570230.

5. It is declared that the first respondent's notice of intention to apply for a grant advertised in the Queensland Law Reporter on 19 September 2025 and served on the Public Trustee on 12 September 2025 satisfied r 599 of *Uniform Civil Procedure Rules* 1999 (Qld) in relation to the applicant's application for a grant.

6. Each party's costs of and incidental to this application be paid out of the estate of the deceased on an indemnity basis.

CATCHWORDS: SUCCESSION- MAKING OF A WILL- TESTAMENTARY CAPACITY- Where a note was signed by the deceased shortly before her death- whether the deceased had testamentary capacity- whether the note is a document which purports to state the testamentary intentions of the deceased.

Succession Act 1981 (Qld) s18, s10

Bailey v Bailey (1923-24) 34 CLR 558
Banks v Goodfellow (1870) LR5QB 549
Bull v Fulton (1941) 66 CLR 295
Greer v Greer [2021] QCA 143
Heffernan v Innis & Anor [2021] NSWSC 1033
Phillpot v Olney [2004] NSWSC 592

COUNSEL: H M Smith for the applicant
J Ahlstrand for the respondents

SOLICITORS: ROC Legal for the applicant
Keppel Coast Law for the respondents

[1] Jacqueline Ann Hall was born 29 August 1962 and died on 18 or 19 January 2025 at her home at 11 Morgan Street, Bellbird Park. The cause of death has been certified by the deputy state coroner as mixed drug toxicity. Ms Hall was found by her former

partner, Mr Sousa. Mr Sousa called emergency services, and the Queensland Ambulance Service and Queensland Police Service arrived.

[2] The police officers took a number of photographs of the deceased's residence and searched the residence. The police general report stated:

> "A note appeared to be signed by the deceased was located on the couch in the downstairs living room. The note appeared to be a crude last will and testament written by the deceased leaving all her belongings to her daughter. An empty cask of Golden Oak Wine was located on the couch and several blister packs were located in close proximity to the couch. Each of the blister packs appeared to be largely empty. Police observed the master bedroom to be in a tidy state with no signs of disturbance. The deceased was located in a prone position on the bed consistent with sleep. […] Police observed a half empty wine glass containing what smelt strongly of white wine. Next to the glass was a quarter empty cask of Golden Oak wine. Police observed a large amount of medication on the bed and dresser."

[3] The forensic pathologist's examination revealed a potentially lethal level of the antihistamine Promethazine and non-toxic levels of Temazepam and Paracetamol, together with a detected but not quantified amount of the antihistamine Fexofenadine. Alcohol was detected at significant levels in the blood at 0.125% and in the urine at 0.2%. The forensic pathologist certified the cause of death as mixed drug toxicity. The forensic pathologist commented that:

> "Toxicology analysis detected Promethazine at a potentially lethal level. Promethazine overdose can cause coma, convulsions, respiratory depression, circulatory failure and death. The presence of alcohol, Temazepam and Fexofenadine may potentiate the adverse effects of the Promethazine."

[4] The applicant, Nicole Lee Ann Hall, is the daughter of the deceased and she seeks an order under s 18 of the *Succession Act* 1981 that the document described in the police report as a "crude last will and testament" constitutes the will of her late mother.

[5] The respondents are the brothers of the applicant. The deceased's husband, Mr Phillip Hall, had died on 9 December 2014. The deceased had been in a relationship with Mr Sousa for several years, however, that relationship had ceased in the period shortly before Ms Hall's death.

[6] Three requirements must be met for s 18 to apply[1]. These requirements are:

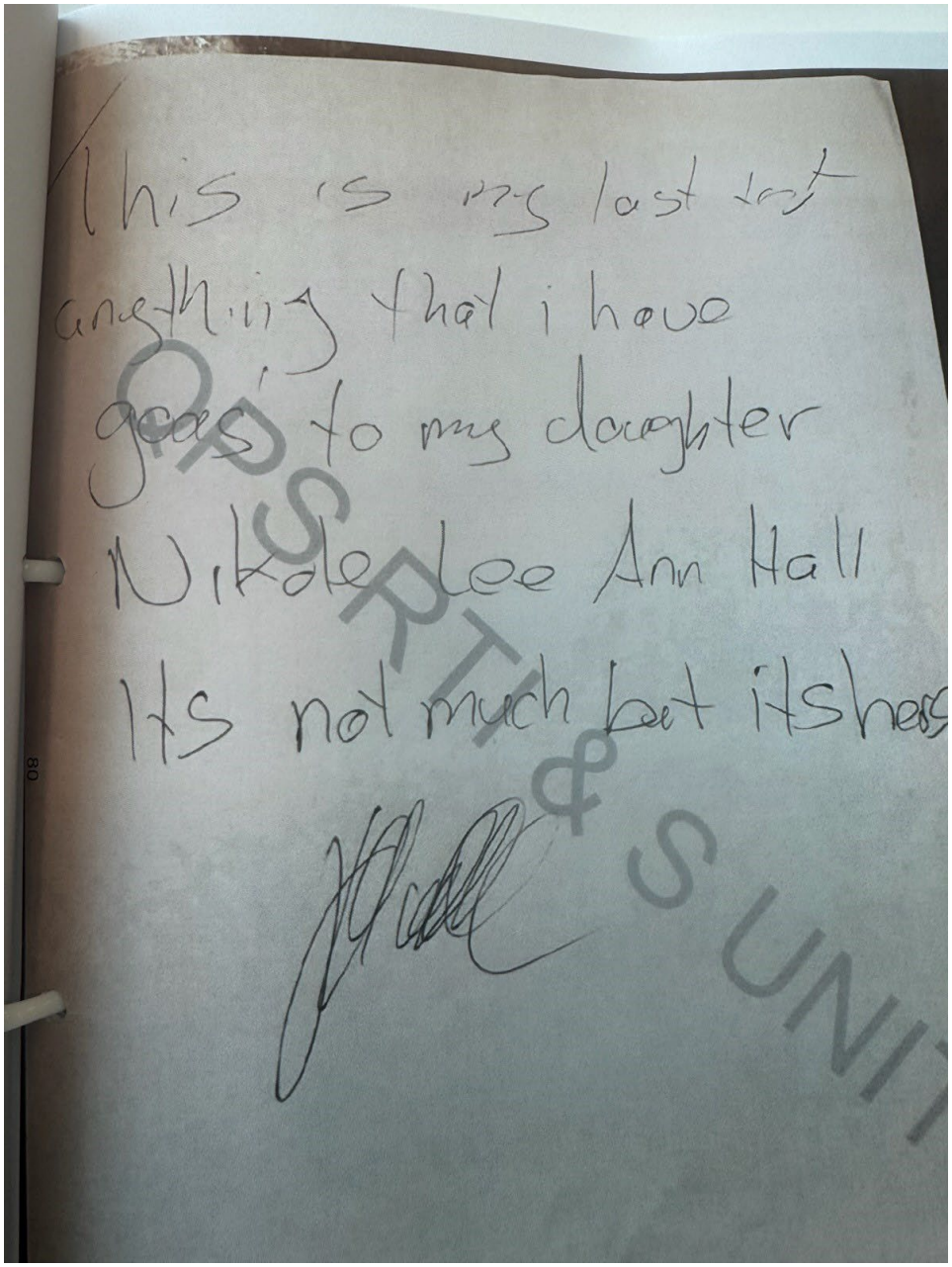
(a) There must be a document that has not been executed under Part 2 of the *Succession Act* (s 18(1)(b));

(b) The document must purport to state the testamentary intentions of a deceased person; (s18(1))

(c) The court must be satisfied that the deceased intended the document to form the deceased person's will. (s 18(2)).

[7] A close-up police photograph of the document[2] is set out below:

[1] *Lindsay v McGrath* [2016] 2 Qd R 160 at [57] per Boddice J, with Gotterson JA agreeing.
[2] note: the original document being destroyed by police as a part of their investigations.



[8] In this application there is no dispute that the first two requirements have been satisfied, that is, plainly the note is a document which purports to state the testamentary intentions of the deceased, Ms Hall. The document has not been executed under Part 2 as Ms Hall's signature was not made or acknowledged in the presence of two or more witnesses at the time and accordingly, s 10(3) and (4) of the *Succession Act* have not been satisfied.

[9] It is the third element being the satisfaction of s 18(2), which is in issue.

[10] In order for a court to be satisfied that a person intended the document to form the person's will, a court must be satisfied that the person had testamentary capacity.

[11] In *Bull v Fulton* (1941) 66 CLR 295 at 343, Williams J said:

> "… it is clear to my mind that, although proof that the will was properly executed is *primá facie* evidence of testamentary capacity, where the evidence as a whole is sufficient to throw a doubt upon the testator's competency, then the court must decide against the validity of the will unless it is satisfied affirmatively that he was of sound mind, memory and understanding when he executed it…"

[12] In *Phillpot v Olney* [2004] NSWSC 592, White J said in an informal will case where a testator had suicided that:

> "[12] The onus of proving that the deceased had testamentary capacity lies upon the plaintiff. If the Court is not affirmatively satisfied that she had such a capacity it is bound to pronounce against the documents. Where a document has been duly executed in accordance with the formal requirements for the making of a will and is rational on its face, such execution raises a prima facie case that the person is of competent understanding which may place an evidentiary onus on the person disputing that the document is the deceased's will to adduce evidence raising doubts as to the deceased's competency (*Bailey v Bailey* (1924) 34 CLR 558 at 570; *Bull v Fulton* (1942) 66 CLR 295 at 343; *Re Hodges; Shorter v Hodges* (1988) 14 NSWLR 698 at 704–705; *Ridge v Rowden; Estate of Dowling*, Santow J, 10 April 1996 in Mason & Handler, Wills Probate and Administration Service para 13045. In this case no such evidentiary onus is thrown on the defendant.
>
> [13] Suicide does not give rise to a presumption of testamentary incapacity. (*Re Hodges; Shorter v Hodges* at 707–708).
>
> [14] In this case the circumstances surrounding the deceased's suicide are such as to raise a substantial doubt as to her capacity to comprehend and appreciate the claims to which she ought to give effect by her will. The circumstances suggest that she suffered from a disorder of the mind which affected her ability to appreciate those claims."

[13] As the applicant, Ms Hall, seeks to propound the informal will of her late mother, the applicant bears the onus of proof of testamentary capacity which needs to be satisfied. Plainly a court cannot be satisfied that the deceased person intended the document to be part of her will if the court is not satisfied that the person had testamentary capacity.

[14] Testamentary capacity, as explained in *Banks v Goodfellow* (1870) LR5QB 549 is to be determined as Williams J said in *Bull v Fulton* on the evidence as a whole. Williams J had relied on the decision of Isaacs J in *Bailey v Bailey* (1923-24) 34 CLR 558 in which His Honour had set out 12 general propositions concerning testamentary capacity.

[15] The fifth and sixth of the general propositions stated by Isaacs J at 570 are that it is the "integrity" of the mind that is requisite in testaments and that:

> "The *quantum* of evidence sufficient to establish a testamentary paper must always depend upon the circumstances of each case, because the degree of vigilance to be exercised by the court varies with the circumstances."

[16] Isaacs J then went on to explain in proposition seven what he meant by the degree of vigilance by reference to analysis of the will itself, that is, whether it was rational or irrational, whether it excluded beneficiaries who naturally had a claim upon the testator, as well as extreme age or sickness or the fact that the drawer of the will or any other person may have motive or opportunity for exercising undue influence in taking substantial benefit.

[17] In the circumstances in the present case, it is clear that there is no suggestion of any person having a motive or opportunity or exercising any undue influence. There however must be a significant degree of vigilance in examining the circumstances as there has been an exclusion of potential beneficiaries, being the two respondents.

[18] Apart from the old common law cases, subsections 18(3) and (4) make it plain that the court may have regard to the broad circumstances involved in any particular case including evidence relating to the way in which the document was executed, evidence of the person's testamentary intentions including evidence of statements made by the person as well as other matters. In terms of s 18(3)(b) there is evidence from the testator's friends, family members and from her own text messages that her testamentary intention was to leave her estate entirely to her daughter, the applicant. Whilst that is of assistance to the applicant's case, those matters cannot be said to be determinative.

[19] The deceased's brother, Andrew, gave uncontested evidence that over the last 10 years or more of his sister's life, his sister had told him "Many times" that Nicole

was to receive what she had. The deceased's father, Mr Phillips, also recalls a similar conversation, however he cannot recall when the conversation occurred.

[20] Similarly, Ms Micallef, who was close friends with the deceased for 47 years has sworn an affidavit that "on many occasions over the years" that her friend the deceased had told her "consistently on each occasion that everything was to go to her daughter, Nicole."

[21] At 3:03pm on 18 January 2025 the deceased sent a Facebook message to her former partner, Mr Sousa, stating amongst other things "I left it all to Niki… RIP… I am in a lot of pain, hopefully won't last long. Anyway, goodbye."

[22] What has been shown by the aforementioned evidence is that for a period of at least a decade, the deceased had expressed a consistent wish to leave the entirety of her estate to her daughter, the applicant.

[23] In Ms Micallef's affidavit, Ms Micallef attests that the deceased had told her "On more than one occasion that her house, her car and the rest of what she owned were to go to Nicole after she died."

[24] One of the important factual circumstances relevant to the determination of capacity is that the deceased took a photograph of the document on her phone at 4:03pm. That document on her phone is shown at page 59 of the exhibits to the applicant's first affidavit. When that photograph of the document is compared to the police photograph of the document as it was found *in situ* contained on page 4 of the exhibits to the applicant's first affidavit, it may be observed that when the deceased photographed the document at 4:03pm it was in a position close to, but not in the same position as the note was found by the police officers.

[25] The act of photographing the document at 4:03pm but not sending it to any person is somewhat curious. The fact that the deceased took the photograph but did not send it to any person seems to me to be a deliberate act by Ms Hall to prove that at the time she had executed the document, she was not intoxicated. The document was executed prior to 4:03pm, and that was at a time well prior to her time of death. At that time, Ms Hall ought reasonably have known that after her body would have been located, that it may have been tested and that testing would have shown that she had ingested a great deal of alcohol and medication.

[26] A great deal of submissions were made upon the nature of the text and Facebook messages and other communications made between 17 and 19 January 2025. The texts show that the deceased was prone to the occasional spelling error. The applicant points out that in the text of 7:01am on 17 January 2025, the only spelling error that is made is with respect to the word "goes" spelt in the text as "goas". The same misspelling is carried through to the critical document.

[27] There has been no suggestion and there is no evidence to support the fact that the deceased, Ms Hall, was in any way affected by alcohol or any other drugs when she wrote the text at 7:01am on 18 January 2025. The fact that there is the other occasional spelling error shown in the texts on that day does lead to the conclusion that the deceased, like many persons, was prone to the occasional spelling error. The only exceptional text on 17 January 2025 is the Facebook message of 10:20pm. The deceased made four spelling errors in that message. I would infer that at 10:20pm the deceased was either tired or somewhat affected by alcohol, or both.

[28] The deceased, Ms Hall's 92-year-old father, Mr Phillips, was in the company of his daughter between around 10:00am and 11:00am on 18 January 2025. Mr Phillips drove his daughter to a tattoo appointment at about 10:00am and as they had arrived early, they had a coffee. Mr Phillips says that his daughter did not express any distress or concerns to him when they were having a coffee. Thereafter, the deceased Ms Hall attended at the tattoo appointment which lasted for three-quarters of an hour. The timing also fits in with the analysis of the deceased's phone and Facebook communications contained in Exhibit 1. There are only a few messages on the morning of 18 January 2025, none contain any spelling errors. Even in the Facebook message of 3:03pm there is no spelling error. There is a minor spelling error in the texts between 3:13pm and 3:55pm which may in fact not be a spelling error, but a peculiarity of the deceased in preferring to use the word "funked" instead of swearing. Although by 4:43pm, the deceased was spelling that word correctly in her texts.

[29] Various text messages from 4:40pm forward show an increasing number of spelling errors and emotional language. Analysis of these texts leads me to conclude that sometime mid-afternoon the deceased did commence consuming the wine. I consider it likely given the Facebook message of 3:03pm that Ms Hall had written and signed

the document before the Facebook message at 3:03pm as it is expressed in the past tense, i.e. "I left it all to Niki."

[30] Furthermore, it seems to me with the inclusion of the letters "RIP" and "I'm in a lot of pain, hopefully won't last long", Ms Hall had formed an intention to commit suicide by that point and had commenced drinking and consuming some various pharmaceuticals.

[31] On behalf of the respondents, it is submitted that the document itself shows that the deceased did not have testamentary capacity at the time she constructed and signed the document. I accept that the penmanship on the handwritten note is relatively poor and when that is compared to the penmanship of the deceased generally, it can be seen that the deceased had neat handwriting. There is further the spelling errors and the unusual form of the fourth word. The applicant submits that the fourth word on the document is "test" as a shorthand version of "testament". Given the circumstances in which the document was constructed, I accept that submission.

[32] It is true that the document has two other spelling errors. That is the word "goes" as "goas" and the incorrect spelling of the applicant's first name as Nikole. As pointed out by the applicant, it seems the deceased had previously misspelled goes when she was not affected by alcohol or any other substance and therefore it seems little turns on that spelling error.

[33] Furthermore, although there is an error in the spelling of Nicole from the "c" to the "k", the evidence is that the deceased commonly referred to her daughter as "Niki". There is the further oddity of misspelling her name, yet including her full name as Nikole Lee Ann Hall. The last line "It's not much but it's hers" does show that the deceased was in an emotional state. I do not read it as an indication that the deceased did not know what her assets were. The deceased ran a home daycare business and had a neat home and was plainly aware of what assets were hers. She had previously discussed that with her friend, Ms Micallef.

[34] The principals for examination of the issue of testamentary capacity are helpfully summarised in the reasons of Bond JA in *Greer v Greer* [2021] QCA 143, at [39] to [52]. In particular, at paragraphs [45]-[46] Bond JA said:

[45] In Read v Carmody , Powell JA identified the various matters required to be considered in determining whether or not a testator had testamentary capacity in these terms (emphasis added to identify the aspects of capacity relevant to the present case):

> Those matters have, over the years, been expressed in varying forms and in differing language, but all formulations seem agreed that testamentary capacity encompasses the following concepts:
>
> 1. that the testator — or testatrix — is aware, and appreciates the significance, of the act in the law which he — or she — is about to embark upon;
>
> 2. that the testator — or testatrix — is aware, at least in general terms, of the nature, and extent, and value, of the estate over which he — or she — has a disposing power;
>
> 3. that the testator — or testatrix — is aware of those or may reasonably be thought to have a claim upon his — or her — testamentary bounty, and the basis for, and nature of, the claims of such persons;
>
> 4. that the testator — or testatrix — has the ability to evaluate, and to discriminate between, the respective strengths of the claims of such persons.
>
> The necessary corollary of this is that, if, at the relevant time the testator — or testatrix — is found to suffer from a condition — whether "mental illness" (or psychosis) in the strict sense or any other form of "mental disorder" (including, but not limited to, deterioration in higher intellectual function or dementia) - which detrimentally affects his — or her — consciousness or sense of orientation, or has brought about disturbances to his — or her — intelligence, cognition, thought content and thought processes, judgment and the like, then, even though that condition may be transient, or, if appropriately treated, reversible, the testator — or testatrix — will, more probably than not, be held to lack testamentary capacity.

[46] The four numbered elements in the quote have been referred to as the four affirmative elements of the test. It is important to appreciate that they do not require perfect levels of the states of awareness or capacity to evaluate or discriminate of which they speak, rather the question is one of degree: Frizzo v Frizzo at [24] . The matters addressed in the last paragraph of the quote are sometimes referred to as negative elements of the test. However, they are to be understood only as an identification of considerations which are such as might (but will not necessarily), in a particular case, prevent the proponent of an impugned will from satisfying their onus as to proof of the affirmative elements. That point was made by White J in Gray v Hart [2012] NSWSC 1435 at [342] to [345] , quoted with

> approval by Kourakis CJ in Roche v Roche [2017] SASC 8 at [27] .

[35] The reasoning of Bond JA had been applied in many other cases. In *Heffernan v Innis & Anor* [2021] NSWSC 1033, Hallen J said at paragraph 413:

> "[413] The mere fact that the deceased had consumed a significant amount of alcohol, even if it were established that he had done so prior to writing the informal document, and that it were established that its consumption detrimentally affected cognition or judgment, does not mean the Plaintiff is unable to establish, affirmatively, that he had testamentary capacity at the time of writing the informal document. The focus of the Court is on "what the evidence in the particular case shows as to capacity at the relevant time, bearing in mind what the evidence evinces as to the probabilities of the relevant condition having impacted on the testator in such a way as to deprive the testator of the relevant capacity": Greer v Greer [2021] QCA 143 at [48] (Sofronoff P, Bond JA and Wilson J agreeing)."

[36] In the present case there is no expert evidence as to the level of alcohol intoxication or effect of any drug at or around the time of the execution of the instrument prior to 3:03pm on 18 January 2025. From an analysis of the texts referred above, and the finding of the empty casks and medications, I infer that the deceased had consumed some alcohol prior to executing the document and possibly some medications prior to the execution of the document. However, it seems to me that it is impossible to infer that at the time that the deceased constructed and signed the document she was significantly affected by alcohol or other drugs.

[37] In this case, the evidence which operates to displace the presumption of testamentary capacity is the failure to have the document properly executed. That does not seem to me to fit into the category of requiring cogent evidence, however, it is sufficient as a matter of law to displace the presumption of testamentary capacity. The question then becomes in terms of the circumstances of the case and all of the surrounding evidence, whether it can be inferred on the balance of probabilities utilising the *Banks v Goodfellow* test, that at the time of the drafting of the document that the deceased Ms Hall had testamentary capacity.

[38] In terms of the first of the four *Banks v Goodfellow* affirmative elements, the testatrix, Ms Hall, was aware of and appreciated the significance of the act in law in which she was about to embark. As Ms Hall wrote, this was her last testament and she gave

everything to her daughter. The circumstances were that Ms Hall and her daughter the applicant had a close relationship over many years and that for at least a decade, the deceased, Ms Hall, had expressed that she wished her daughter to inherit all her property.

[39] As to the second positive element, nothing in the document suggests that the deceased, Ms Hall, knew of the nature, extent and value of her estate over which she had the disposing power. There is little in the document. The last six words of the document "It's not much but it's hers" together with the surrounding circumstances, being her multiple discussions with Ms Micallef, does lead me to conclude that the deceased Ms Hall was aware of her estate, that being her house, her car and her chattels. It seems to me the last sentence that "It's not much but it's hers" can be read in the context of a self-deprecating but fair overall comment on the deceased's financial position.

[40] It is the exclusion of the first and second respondents, the deceased's sons, which provides the largest hurdle in terms of the third and fourth positive elements of the Banks v Goodfellow test. There is nothing in the document which makes reference to the deceased's sons, however, nor does it make any reference to the deceased's former partner, Mr Sousa.

[41] It seems to me that could not be considered to be a total impediment to the satisfaction of elements three and four. The Facebook message sent by the deceased to Mr Sousa at 3:03pm in which the deceased advised Mr Sousa "Just letting you know you didn't get anything. I left it all to Niki…" shows that the deceased was considering competing claims upon her bounty.

[42] In the affidavit by the first respondent Shaun, he explains that he does accept that his sister the applicant did have a close relationship with the deceased and was able to spend a good deal of time with her. Shaun also explains how he and his brother the second respondent had responsible jobs in other places away from the deceased's residence and had been working hard raising their own families over the years. Shaun had occasional contact with his mother and there was no estrangement. It seems to me the fact that there was some contact as deposed to by the first respondent and no estrangement ought to lead me to the conclusion, together with the deceased's general disposition of being a responsible person operating a daycare business in her own

home, that the deceased may reasonably be thought to be aware of the claims of her two sons upon her bounty and due to her long-expressed view that her daughter ought to inherit her entire estate that the deceased did have the ability to evaluate and discriminate between the respective claims and strengths of such persons.

[43] As is shown in the first Shaun's affidavit, both he and his brother are hard-working and successful people. I accept that the applicant Ms Hall had a particularly close relationship with her mother. Ms Hall lived in Brisbane prior to February 2002 and would see her mother two to three times per week. Ms Hall had four children. In February 2022, Ms Hall moved to Yeppoon in Central Queensland to commence work at the Capricornia Correctional Centre. Ms Hall's partner is a plant operator and supervisor at QMag. Nothing in the surrounding facts would suggest that the deceased was unable to evaluate and discriminate between the respective strengths of the claims of her children and the 3:03pm text is some evidence surrounding to suggest that the deceased Ms Hall in fact did have the ability to evaluate and discriminate between the respective strengths of the claims at the time that she drafted and executed the document.

[44] The surrounding circumstances are that the deceased, by virtue of her occupation in childcare, by the keeping of a clean and well-ordered home, the forming of close relationships with friends, particularly her daughter the applicant and the discussions with her friend Ms Micallef, her father Mr Phillips and her brother Mr Andrew Phillips does lead me to conclude on the balance of probability that the deceased did have the ability to evaluate and discriminate between the respective strengths of the claims of her children. I am accordingly satisfied that the deceased, Ms Hall, had testamentary capacity and that she intended the document to be her will.

[45] I make the following orders:

1. Pursuant to s 18 of the *Succession Act* 1981 (Qld), the formal execution requirements in s 10 of the Act be dispensed with in relation to the informal will of the deceased, JACQUELINE ANN HALL, a copy of which is in exhibit NH-4 of the Affidavit of Nicole Lee Ann Hall sworn 24 March 2026.

2. It is declared that the informal will of the deceased is her last will and testament and of effect.

3. Subject to the formal requirements of the Registrar, letters of administration with a copy of the informal will annexed issue to the applicant.

4. Pursuant to s 114(3)(a) of the *Land Title Act* 1994 (Qld), the applicant as personal representative of the deceased be registered as the sole proprietor of the land described as Lot 3 on Registered Plan 158978, title reference 1570230.

5. It is declared that the first respondent's notice of intention to apply for a grant advertised in the Queensland Law Reporter on 19 September 2025 and served on the Public Trustee on 12 September 2025 satisfied r 599 of *Uniform Civil Procedure Rules* 1999 (Qld) in relation to the applicant's application for a grant.

6. Each party's costs of and incidental to this application be paid out of the estate of the deceased on an indemnity basis.