

SUPREME COURT OF QUEENSLAND

CITATION: *In the Estate of Hendrik Philippus Berend Drent* [2026] QSC 210

PARTIES: **In the Estate of Hendrik Philippus Berend Drent:**

ADAM JAMIE WATKINS

(applicant)

v

HENDRIKUS BORCHERDT

(respondent)

FILE NO/S: SE 06398 of 2025

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 11 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 3 July 2026

JUDGE: Freeburn J

ORDERS: **1. The caveat lodged in proceeding SE06195/25 ought to be removed, and an order made permitting the will of the Deceased dated 21 March 2023 to be admitted to probate.**
2. I will hear the parties on the form of the orders and on the undertaking offered by the applicant and on costs.

CATCHWORDS: SUCCESSION – PROBATE AND LETTERS OF ADMINISTRATION – PROCEDURE – QUEENSLAND – CAVEATS – where the respondent lodged a caveat against an application for probate – where the applicant seeks removal of the caveat – where the respondent resists the application on grounds that the Deceased lacked capacity at the time of executing the relevant Will and that it was the product of undue influence – whether the respondent has raised doubt as to whether the grant of probate ought to be made – whether the application to remove the caveat should be granted

Uniform Civil Procedure Rules 1999 (Qld), r 624, r 626

Bull v Fulton (1942) 66 CLR 295; [1942] HCA 13, cited
Gardiner v Hughes (2017) 54 VR 394; [2017] VSCA 167, followed

Leitch v Dore [2005] 2 Qd R 168; [2005] QSC 69, cited

Re Russell [1986] 1 Qd R 131, cited

COUNSEL: S Montgomery
(Counsel for the applicant)
H Borchardt
(self-represented respondent)

SOLICITORS: Easton Lawyers
(applicant)

- [1] The applicant, Mr Watkins, applies for the removal of a caveat lodged by the respondent, Mr Borchardt, against the grant of probate in respect of the estate of Hendrik Philippus Berend Drent, also known as Hank Drent (**the Deceased**). Mr Borchardt is the Deceased's nephew.¹

Background

- [2] The Deceased died on 23 March 2025 at the age of 88. The Deceased's last known Will was made on 21 March 2023, two years before his death (**the 2023 Will**). That Will appointed the applicant, Mr Watkins, as the executor and trustee, as well as a beneficiary under the Will.
- [3] Three Wills of the Deceased have been identified, dated 23 July 2013, 14 October 2016 and 21 March 2023. The third Will is the last known Will of the Deceased.
- [4] The Deceased's wife passed away in 2006. The Deceased had no children.² Each of the three Wills left his estate to three people who were close to the Deceased at that point in his life. Those three people were: Des Aston (the first Will), Petrovich Chipisuboff or alternatively Christopher Kendall Baker (the second Will), and Mr Watkins (the third Will).
- [5] None of the three Wills make any provision for Mr Borchardt, nor do they appoint him a trustee or executor of the estate. Mr Borchardt is not referred to in any way in any of the testamentary documents. He has no interest in respect of any of the wills made by the Deceased.
- [6] On 23 May 2025, pursuant to rule 624 of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**) Mr Borchardt lodged a caveat seeking to:
- (a) prevent a grant of probate;
 - (b) prevent an order to administer the estate;
 - (c) requiring the matter to be referred to a court; and
 - (d) requiring proof in solemn form of any will of the Deceased.
- [7] By an application filed on 9 April 2026, Mr Watkins has applied to the court for an order removing the caveat and for an order that the Will of the deceased dated 21 March 2023 be admitted to probate.

¹ The submissions on behalf of Mr Watkins did not concede this. But, for present purposes the nephew/uncle relationship is assumed.

² Mr Borchardt contested this, but no evidence of children has been adduced.

The Application to Remove the Caveat

- [8] Mr Watkins' application to set aside the caveat is made pursuant to rule 626 of the UCPR, which provides:

626 Setting aside caveat

- (1) If—
 - (a) a person intends to apply for a grant; and
 - (b) a caveat is in force in relation to the estate;
 the person may apply to the court, naming the caveator as a respondent, for an order setting aside the caveat.
- (2) The court may set aside the caveat if the court considers that the evidence does not—
 - (a) show that the caveator has an interest in the estate or a reasonable prospect of establishing an interest; or
 - (b) raise doubt as to whether the grant ought to be made.

- [9] Thus, as counsel for Mr Watkins explained, the issues for determination by this application are whether:

- (a) *firstly*, Mr Borchardt has an “*interest in the estate*” such that he was entitled to lodge, and now maintain, the caveat; and
- (b) *secondly*, whether the evidence before the court does or does not raise doubt as to whether the grant for probate ought to be made.

- [10] Mr Borchardt raised a number of other issues which I will come to.

Interest in the Estate – the principles

- [11] Mr Borchardt will have an interest sufficient to support a caveat if, by reference to the general body of probate law, he has an interest sufficient to entitle him to object to a grant because some right of that person will be affected by the grant.³ That is the principle derived from *Re Devoy; Fitzgerald & Pender v Fitzgerald*.⁴ In order to establish an interest in an estate sufficient to ground the filing of a caveat, the caveator must establish that his or her interest is a “*real*” one, and that the caveator’s interest would be affected by a grant.⁵ Thus,

- (a) an executor of a Will has no interest in the estate of the deceased *per se*; any interest that he has stands or falls with the Will;⁶
- (b) the possibility that the court may, in its discretion, make such provision as it thinks fit out of the deceased’s estate for his (illegitimate) child conferred a

³ *Re Devoy; Fitzgerald & Pender v Fitzgerald* [1943] St R Qd 137 at 144–145.

⁴ *Ibid.*

⁵ *Leitch v Dore* [2005] 2 Qd R 168; [2005] QSC 69.

⁶ *Leitch v Dore* citing *In the Goods of Chamberlain* (1867) LR 1 P & D 316.

sufficient interest in the estate as to give him standing in the action to challenge the Will;⁷

- (c) a sufficient interest will be established if a residual beneficiary's share of the estate may be augmented in the event of the failure of a bequest to the deceased's solicitor;⁸ and
- (d) a person interested on an intestacy will have a sufficient interest in the estate because, if probate of the Will in question is granted, their right on intestacy is lost.⁹

[12] Counsel for Mr Watkins referred me to *Gardiner v Hughes*, a decision of the Victorian Court of Appeal.¹⁰ The facts of that case are similar to the facts here.¹¹ In *Gardiner v Hughes* the deceased had three Wills made in 2008, 2012, and a final Will on 6 May 2015. The applicants were two nephews and a niece of the deceased, who were not beneficiaries under any of the wills, but would take a share of the estate if the deceased died intestate. The applicants sought declarations of invalidity in respect of each of the three Wills on the grounds of testamentary incapacity, and a declaration that the deceased died intestate.

[13] McLeish JA (with whom Tate and Kyrou JJA agreed) said:

It can be seen that *Re Devoy* does not insist that a party challenging probate show a prima facie case in order to establish standing, only that he or she point to 'some right of that person which will be affected by the grant' or show that he or she has something 'to gain' from the litigation. As appears further below, the case is one of a number in which **an unchallenged will stood between the will in dispute and an intestacy**, thereby depriving those who would take on an intestacy, but not under the will in dispute, of standing in relation to that will. Put simply, persons in that situation have 'nothing to gain' by displacing the later will.¹² [emphasis added]

[14] His Honour continued:

First, in order to establish standing, an applicant for an order revoking a grant of probate or letters of administration must have a sufficient interest in the proceeding. Sufficiency of interest is established by showing that the applicant's rights would or might be affected if the grant were to be revoked. The bare possibility of an interest will suffice.

Secondly, where the validity of more than one will is in issue, the applicant must establish standing by showing that his or her rights would or might be affected if the grant were to be revoked and the disputed wills were found to be invalid. Conversely, **if there is a prior, undisputed will under which the applicant would derive no**

⁷ *Hogarth v Johnson* [1987] 2 Qd R 383.

⁸ *Leitch v Dore* at [17].

⁹ *Re Russell* [1986] 1 Qd R 131.

¹⁰ (2017) 54 VR 394; [2017] VSCA 167 (*Gardiner v Hughes*).

¹¹ The following summary of the facts is based on Counsel for Mr Watkins' submissions at [30]-[33].

¹² *Gardiner v Hughes* at [57].

benefit, the applicant will lack standing to challenge the grant made in respect of the later will.

Finally, although an application for revocation is made in the proceeding in which probate or letters of administration were granted, there are cases in which the validity of more than one will has been put in issue in the same proceeding. Alternatively, prior wills might be in dispute in separate proceedings. By whatever procedural means the dispute has been raised, the principles stated above operate in the same manner.¹³ [emphasis added]

- [15] In *Gardiner v Hughes* the applicant nephews and nieces succeeded in establishing that they did have standing to bring their application. McLeish JA explained the reasons:

Applying these principles to the present case, the appeal must succeed. Although the underlying proceeding had concerned only the 2015 will, in respect of which probate was granted, **the applicants by their summons sought to challenge each of the wills of the deceased.** There was evidence that, **if they were to succeed in that endeavour, they would participate in the estate on an intestacy.** The question before the Court was not whether the claims should be summarily dismissed, nor had the Court required the applicant to show a prima facie case during the course of the proceedings, in the manner described above. The preliminary question was confined to the issue of standing. Because **the applicants stood to benefit if the claims they made in their summons were upheld, they had standing to pursue that summons.** That was so, both in so far as the applicants sought to achieve a full intestacy upon invalidity of all the wills, and since they sought a partial intestacy in the alternative by impugning the position of the second respondent if the 2015 will were valid.¹⁴ [emphasis added]

- [16] The fact that in *Gardiner v Hughes* the applicants sought to challenge each of the wills of the deceased is in contradistinction to the facts of this case.
- [17] The decision of Williams J in *Re Russell*¹⁵ appears to go the opposite way. There the deceased died having never married and leaving no issue, his nearest relatives being nephews and nieces, one of whom lodged a caveat against probate. The executors appointed under the Will sought to set the caveat aside on the basis that the respondent did not have a sufficient interest in the estate.¹⁶
- [18] Williams J stated:

It seems to me that all persons interested on an intestacy have an “*interest in the estate*”, because if probate of the Will in question is granted their right on intestacy is lost.¹⁷

¹³ *Gardiner v Hughes* at [90]-[92].

¹⁴ *Gardiner v Hughes* at [94].

¹⁵ [1986] 1 Qd R 131 (*Re Russell*).

¹⁶ Again, the following summary of the facts is based on Counsel for Mr Watkins’ submissions at [40].

¹⁷ *Re Russell* at 133.

[19] And then Williams J continued:

Finally Mr. Hampson submitted that the respondent could not claim an “*interest*” in a distribution on intestacy without challenging earlier Wills of the deceased, principally those dated July 16, 1982 and February 28, 1983. I cannot see why that should be so. There is only a Request for Probate and an action seeking probate in solemn form of the Will dated September 30, 1983. At this stage it seems to me that it would be premature for the caveator to assert the invalidity of the earlier testamentary documents.¹⁸

[20] The reasons of Williams J seem to assume that there would be, in the future, challenges to the earlier Wills.¹⁹ However, the decision in *Re Russell* is inconsistent with *Gardiner v Hughes*. In my view, *Gardiner v Hughes* is correct. A person whose interest is derived from intestacy can only be said to have a sufficient interest if intestacy is a realistic prospect. Or, to put the point in terms of the general principle derived from *Re Devoy; Fitzgerald & Pender v Fitzgerald* (discussed above), by reference to the general body of probate law, a person in this position does not have an interest sufficient to entitle him to object to a grant because no right of that person will be affected by the grant. The existence of the prior wills means that the caveator’s interest would not be affected by a grant.

[21] In any event, because it is not plainly wrong, I am bound to follow the decision of the intermediate Court of Appeal in *Gardiner v Hughes*.²⁰

Interest in the Estate – the principles applied

[22] Here, if there were only one Will, then, as the Deceased’s ‘next of kin’, Mr Borchardt would have a sufficient interest in the Deceased’s estate in the event of an intestacy. But here, as explained, there are three Wills. Mr Borchardt is not a beneficiary under any of them. There is no evidence that suggests that there is a realistic prospect that all three Wills, executed over a 10 year period, will be held to be invalid.

[23] Mr Borchardt’s written submission on this point was as follows:

5. Challenging the Applicant's Position on Standing The Applicant's contention that I have no “*interest*” in the estate is a strategic attempt to prevent the Court from examining his conduct. My standing is robust and established by:

- **Direct Interest:** As a party challenging the validity of the 2023 Will based on undue influence and lack of capacity, I am an “*interested person*” under the relevant probate rules. The invalidation of the 2023 Will would necessitate a review of the Deceased’s testamentary intentions, in which I have a legitimate stake.

¹⁸ *Re Russell* at 134.

¹⁹ See the sentences at 134-135: “*There is only a Request for Probate and an action seeking probate in solemn form of the Will dated September 30, 1983. At this stage it seems to me that it would be premature for the caveator to assert the invalidity of the earlier testamentary documents*”.

²⁰ *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89; [2007] HCA 22 at [135].

- **Fiduciary Accountability:** The Applicant's breach of his duty—evidenced by the conversion of estate assets to his own use—gives me the standing to prevent the grant of probate to an individual who has proven himself unfit to hold the office of executor.

- [24] Whilst Mr Borchardt may have an 'interest' in the sense of a concern about the validity of the 2023 Will, he does not have a sufficient interest in the proprietary sense discussed above. On the basis of the principles discussed, a prurient interest, or even a legitimate desire to ensure the estate is properly administered, does not qualify as a sufficient interest.
- [25] It follows that Mr Borchardt does not have standing. On that ground, his caveat should be set aside. Because it was argued in some detail by both parties, I should also consider the second issue.

Doubt as to whether the grant for probate ought to be made

- [26] The second issue is whether the evidence does or does not raise a doubt as to whether the grant of probate ought to be made.²¹
- [27] The degree of doubt that needs to be shown to arouse concern varies with circumstances.²² Mere suspicion is not sufficient.²³
- [28] The problem with much of Mr Borchardt's material is that it does not rise any higher than suspicion. In many cases his material is hearsay, sometimes even second-hand hearsay, often from neighbours and sometimes even unidentified persons he has spoken to. Much of the material is little more than rumour or gossip.
- [29] An example can be given. Under a heading 'Investigation into Misuse of Estate Funds' Mr Borchardt says this:

101. On 17 July 2025, Mr Watkins, purchased a Hustler Zero-Turn Slasher from Beerwah Small Engine for \$8,500. The transaction record identifies the payment method by the final four digits, 1868.

102. At this time, the Deceased had been informed by his medical team that he had approximately two months to live. According to the evidence provided by Mr Simon Oswald, the Deceased was in a state of extreme psychological distress during this period.

103. My contemporaneous notes regarding this transaction are attached hereto as Exhibit 'HB-page 56-57'.

- [30] The date appears to be wrong, or at least it is inconsistent with Mr Borchardt's handwritten note which is as follows:

17/07/2025
Beerwah Small Engine
7 Beerwah Pde Beerwah

²¹ See UCPR rule 626(2) quoted above.

²² *In the Will of Bruce George Gillespie (deceased)* [2012] QSC 335 at [12].

²³ *Green v Critchley* [2004] QSC 022 at [19].

Spoke to a woman employee
 said Adam Watkins Purchased a
 Hustler Zero-Turn Slasher
 on 17 February 2025
 In his name
 cost \$8500
 paid for with a card
 with last 4 digits
 1868

- [31] And so, on 17 July 2025, Mr Borchardt’s investigations involved him having a conversation with an unidentified employee of a business. That evidence, for all its shortcomings, merely establishes a purchase of a slasher by Mr Watkins in February 2025. There is no evidence of misconduct or misuse of the Deceased’s funds. Even if the Deceased had been involved in the purchase, he was entitled to do so.
- [32] The suggestion that the Deceased lacked capacity at this time is not supported by any medical evidence let alone admissible evidence. Mr Simon Oswald has not sworn an affidavit. Mr Borchardt merely says what he says Mr Oswald told him. There is no precision about the time, or the state of the Deceased’s physical or mental health.
- [33] In short, the investigations made by Mr Borchardt have not raised a concern. They have merely raised Mr Borchardt’s suspicions.
- [34] As counsel for Mr Watkins points out, the highest the evidence goes is that:
- (a) on 15 February 2023 the Deceased’s treating doctor expressed “*concern*” about the Deceased using ‘Buprenorphine patches and temgeic (sic)’ at the same time (being prescription pain relief), and that he had been prescribed pain relief, after an apparent surgery; and
 - (b) this occurred, and the Deceased was generally taking pain medication, shortly prior to the execution of his Will on 21 March 2023; the medication that the Deceased was taking is described by Mr Borchardt as “*high-risk*” and “*known to cause drowsiness, disorientation, and cognitive clouding*”.
- [35] No medical or other evidence established or even raises a realistic concern that the Deceased did not have capacity at the time he executed the 2023 Will. The evidence is that the 2023 Will was properly executed. That means there is *prima facie* evidence of testamentary capacity.²⁴
- [36] Each of the Deceased’s three Wills leaves his estate to those that are close to him at the time. There is a pattern to the Wills that suggests that it was logical for the Deceased to leave his estate to Mr Watkins on whom he was largely dependent.
- [37] Contrary to Mr Borchardt’s assertions, the evidence is that Mr Watkins was properly excluded from the Will instruction process.²⁵ And, nothing in the evidence supports an inference that the Deceased did not understand the effect of the Will he was executing.

²⁴ *Bull v Fulton* (1942) 66 CLR 295; [1942] HCA 13 at 343

²⁵ First Easton Affidavit para [7].

- [38] Mr Borchardt alleges that the notes made by the solicitor who took the instructions for the 2023 Will are “*not a legitimate capacity assessment but a record of a pre-scripted narrative filled with manifest factual errors (e.g., the Deceased’s employment history)*”. I do not accept that the solicitor’s notes raise any serious question about the Deceased’s capacity at the time of execution of the 2023 Will.
- [39] Mr Borchardt alleges that Mr Watkins exercised undue influence over the Deceased. But no evidence supports that assertion beyond a degree of dependence on Mr Watkins – which is not surprising given the Deceased’s age at the time.
- [40] I accept the submissions on behalf of Mr Watkins that the evidence adduced or relied on by Mr Borchardt does *not* carry such weight that it would cause the court to doubt that a grant of probate ought to be granted.

Other Issues

- [41] Mr Borchardt raised a number of other issues, mainly concerned with how Mr Watkins dealt with the property of the Deceased. That evidence largely comprises notes that Mr Borchardt has made with neighbours, shopkeepers and the like. Sometimes these people are identified and sometimes they are not. The evidence does not qualify as evidence, and I decline to act on it.
- [42] During the hearing I raised with Mr Borchardt that he had not brought an application disputing that Mr Watkins was a fit and proper person to administer the estate. Mr Borchardt acknowledged the problem and contended that the evidence supported the maintenance of his caveat.²⁶ As explained above, the law is that Mr Borchardt must establish that he has standing *and* that there is doubt as to whether a grant of probate should be made. The complaints Mr Borchardt makes are relevant to that second issue, but the evidence, such as it is, is poor and merely establishes that Mr Borchardt harbours some suspicions. In any event, Mr Borchardt has the problem that he lacks standing.
- [43] Mr Borchardt complained that Mr Watkins had failed to give him various documents, including an assets and liabilities statement. The problem is that Mr Borchardt assumed that he had standing to demand documents. He does not.

Conclusion

- [44] It follows that the application should be allowed and Mr Borchardt’s caveat should be set aside.
- [45] Mr Watkins was willing to provide an undertaking not to deal with the property at 6 Sternberg Road, Witta, other than for the purposes of transmission of title in his capacity as personal representative of the Estate of the Deceased, until after 4pm on the date one month after delivery of this judgment. That undertaking ought to be accepted and incorporated in the orders.
- [46] I will hear the parties on the form of the orders and on the undertaking offered by the applicant and on costs.

²⁶ Transcript T1-17 line 45.

