

SUPREME COURT OF QUEENSLAND

CITATION: *Patterson v Weatherald* [2026] QSC 243

PARTIES: **CARMEN LEE PATTERSON**
(applicant)
v
MARCUS DAMIEN WEATHERALD
(respondent)

FILE NO/S: BS 3618 of 2026

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 9 October 2026

DELIVERED AT: Brisbane

HEARING DATE: 29 September 2026

JUDGE: Martin J

ORDER:

- 1. The grant of probate of the will of Malcolm Rodney Weatherald (the deceased) dated 7 March 2007 granted by this Court to Carmen Lee Patterson and Marcus Damien Weatherald is revoked.**
- 2. Carmen Lee Patterson and Marcus Damien Weatherald are removed and discharged as executors and trustees of the estate of the deceased.**
- 3. Subject to the formal requirements of the Registrar, letters of administration of the estate of the deceased, with the will dated 7 March 2007, in respect of so much of the estate as remains unadministered, be granted to Eryan Haddon of Trekk Advisory as independent administrator.**
- 4. Pursuant to s 68 of the Succession Act 1981 (Qld), Eryan Haddon of Trekk Advisory be allowed to charge professional services fees for work undertaken acting as services rendered as administrator of the estate.**
- 5. Any requirements for advertising the intention of Eryan Haddon of Trekk Advisory to obtain a grant of letters of administration with the will are dispensed with.**

6. Pursuant to s 45(4) of the Succession Act 1981 (Qld), all property of the deceased vest in Eryan Haddon of Trekk Advisory as administrator of the estate.
7. Within 14 days of the appointment of the independent administrator, the respondent deliver up to the independent administrator possession of all property, books, accounts, records and documents of or relating to the estate that are in his possession, custody or power, and provide:
 - (a) a full inventory of the personal property of the deceased situated at 181 Willetts Road, Bauple;
 - (b) a full account of all rental income received by him in respect of the estate property, together with the rates, insurance and other outgoings of that property paid by or on behalf of the estate; and
 - (c) the cheque issued by the Australian Taxation Office made payable to the estate.
8. The respondent is to pay the applicant's costs on the standard basis.

CATCHWORDS: SUCCESSION – PERSONAL REPRESENTATIVES – RIGHTS, POWERS AND DUTIES – DISPUTES BETWEEN PERSONAL REPRESENTATIVES – where the applicant and respondent are co-executors and beneficiaries of an estate – where the respondent is alleged to have failed to take necessary steps to administer the estate and execute duties as an executor – where the respondent accepts he has caused some delay but opposes the appointment of an independent administrator – where the applicant applies for the removal of the respondent and herself as executors and appointment of an independent administrator – whether the applicant and respondent should be removed as executors and an independent administrator be appointed

SUCCESSION – PERSONAL REPRESENTATIVES – RIGHTS, POWERS AND DUTIES – DISPUTES BETWEEN PERSONAL REPRESENTATIVES – where the applicant seeks that her costs of and incidental to the application be paid on the indemnity basis by the respondent personally, or be paid out of the respondent's beneficial entitlement in the estate – whether the respondent should be personally liable for costs

Miller v Cameron (1936) 54 CLR 572

Renton v Dresselhaus [2026] QSC 95

Renton v Dresselhaus (No 2) [2026] QSC 145

COUNSEL: F Chen for the applicant
J Forde for the respondent

SOLICITORS: Cohen Legal for the applicant
 Lewis & McNamara for the respondent

- [1] Malcolm Weatherald died on 9 March 2023. He left a Will by which he appointed his only children – Carmen Patterson (the applicant) and Marcus Weatherald (the respondent) as his executors and the only beneficiaries.

- [2] Ms Patterson applies for the removal of both her brother and her as executors and the appointment of Eryan Haddon as administrator in their stead. Ms Haddon is currently the accountant for the estate.

- [3] Ms Patterson alleges that Mr Weatherald has failed to take the necessary steps to administer the estate and execute the duties of an executor. Mr Weatherald concedes that he is responsible for some delays but that otherwise the administration of the estate is substantially complete, that he is willing to do what is necessary to achieve completion and that there is no need to incur the costs of an administrator.

What are the matters to consider on an application to remove an executor?

- [4] The seminal description of the principles to be applied in these circumstances is contained in the decision of Dixon J¹ in *Miller v Cameron*:²

“The jurisdiction to remove a trustee is exercised with a view to the interests of the beneficiaries, to the security of the trust property and to an efficient and satisfactory execution of the trusts and a faithful and sound exercise of the powers conferred upon the trustee. In deciding to remove a trustee the Court forms a judgment based upon considerations, possibly large in number and varied in character, which combine to show that the welfare of the beneficiaries is opposed to his continued occupation of the office. Such a judgment must be largely discretionary. A trustee is not to be removed unless circumstances exist which afford ground upon which the jurisdiction may be exercised. But in a case where enough appears to authorize the Court to act, the delicate question whether it should act and proceed to remove the trustee is one upon which the decision of a primary Judge is entitled to especial weight.”

¹ With whom Evatt and McTiernan JJ agreed.

² (1936) 54 CLR 572.

- [5] A general description of the principles and matters to be considered on an application of this kind was conveniently summarised by Williams J in *Renton v Dresselhaus*,³ where her Honour said:

“These principles include:

- (a) The starting point is that the choice of executor is that of the testator, which is honoured unless there is some good reason why that chosen executor ought not to continue to administer the estate.
- (b) Misconduct by an executor often will justify removal but misconduct is not a necessary prerequisite to the Court’s exercise of the discretion to remove an executor.
- (c) A conflict of interest between the executor and other interested parties is a relevant consideration but the existence of a conflict in itself may not be determinative. The relevant question is the extent of the conflict and its likely effect upon the administration of the estate.
- (d) Delay in the administration of the estate or a relationship breakdown between trustees or between trustees and beneficiaries may warrant the removal of executors.
- (e) The jurisdiction to remove a trustee must be exercised taking into account the interests of the beneficiaries, the security of the trust property and the efficient, faithful and satisfactory execution of the trust and the power conferred on the trustees.
- (f) The testator’s choice as to executor is to be given due weight but does not limit the Court’s jurisdiction to ensure that the welfare of the beneficiaries is adequately protected and the trust properly administered.
- (g) The Court’s ultimate concern is with the due and proper administration of the estate in the interests of the beneficiaries. The power is to be exercised in accordance with this objective.”

What are the matters relied upon by the applicant

- [6] Ms Patterson relies upon what she describes as failures by Mr Weatherald to discharge his duties as co-executor. I set them out below.
- [7] The testator left, as part of his estate, a rural property at Bauple. There were a number of buildings on the estate and, before his father’s death, Mr Weatherald lived on the property and paid his father rent. After the death of his father, Mr Weatherald continued to live on the property but has not paid anything to the estate. The estate

³ [2026] QSC 95.

has been largely responsible for the payment of rates, insurance and other outgoings. Mr Weatherald does not dispute this but says the buildings he occupied needed considerable upkeep. I accept that the building he occupied was in very poor repair, but he has failed, so far, to account to the estate for his occupation.

- [8] Mr Weatherald rented out another dwelling on the property. The parties disagree about whether Ms Patterson knew of this. In any event, he received rent for the occupation by another person of that dwelling. He says that he “quarantined” the funds received and used some of them to pay for expenses incurred on the property. There is about \$30,000 in a separate account which he has conducted and which he now offers to transfer to the estate bank account upon receiving the necessary details.
- [9] The parties have been discussing the prospect of Mr Weatherald buying the whole of the property at Bauple since about May 2023. As part of that process, the property has been valued but, after receiving this application, Mr Weatherald now says that he does not want to buy it and is content for it to be sold.
- [10] Mr Weatherald has not provided an inventory of his father’s personal property despite many requests to do so and his own agreement to do so. As with the issue of purchasing the property, this application has prompted him to “commence” doing that work.
- [11] The deceased had failed to lodge the necessary documents for his self-managed superannuation fund for many years before his death. One of the tasks of the estate accountants was to bring this up to date and to create the necessary documents after the father’s death. Mr Weatherald was required to sign these documents but frequently delayed in doing so for periods which ranged from 10 days up to about four months. This, unsurprisingly, led to rolling delays in the administration of the estate. Mr Weatherald responds that the estate accountants had delayed in their attendance to some of these matters. That is, to an extent, correct. But that does not excuse his delays in attending to matters including when the Australian Taxation Office had issued a final demand.
- [12] A matter of particular concern is Mr Weatherald’s capacity to fulfil the duties of an executor. It may be that his vacillation over purchasing the property, preparing the

inventory and the other shortcomings identified in the material were not deliberate. In the written submission filed on his behalf the following appears:

“The respondent suffered PTSD after the death of his father and had trouble dealing with some estate paperwork. He is now being treated for that and has undertaken to complete the paperwork as it is issued (or re-issued). The parties were negotiating the sale of real property, but that task has fallen away. All that is required in that regard is the appointment of a sales agent.”

- [13] In support of that submission, Mr Weatherald has exhibited to his affidavit the first page of a letter from a general practitioner to an unidentified psychologist requesting the psychologist’s “expert assessment and psychological management of these symptoms”. The identity of the general practitioner is not revealed but the letter is dated 21 August 2026, after Mr Weatherald received the application in this matter. In the general practitioner’s letter, he refers to Mr Weatherald’s “severe anxiety depression, and trauma-related systems present for the past 3.5 years following the traumatic discovery of his deceased father at home several days after death”.
- [14] The general practitioner goes on to report that his symptoms had affected his functioning significantly, that he ceased a long-term job nine months after his father’s death due to overwhelming anxiety and that he is currently struggling to manage legal and estate matters because these are triggering.
- [15] Mr Weatherald has provided no evidence of his treatment or any prognosis from a psychologist. All his protestations about complying with his duties as an executor have emerged since this application was filed.
- [16] I also need to take into account the relationship between the executors. The applicant no longer wishes to be an executor. I would be content to remove her only if I were satisfied that Mr Weatherald would, and could, fulfil his duties. I am not so satisfied. His recent changes of approach all post-date this application as does his consultation with his general practitioner. That change of approach has not resulted in completion of any requirement: documents remain to be signed; the inventory is incomplete and there has not been a reconciliation of the rent he has received nor the rent which the estate might expect to have received from him.
- [17] Mr Weatherald remains in a position of conflict with respect to his occupation, rent free, of one of the buildings on the property.

The relationship between the executors

- [18] While the testator's choice as to executor is to be given due weight, the application must be viewed in the light of the circumstances which exist at the time that the application is made. Where executors cannot work together then the estate will benefit from the appointment of someone who can fulfil the duties which need to be performed. The relationship with her brother is only briefly referred to by Ms Patterson in her affidavit ([61]) where she says that she is unable to work with her brother to complete the administration of the estate. That is reinforced by the actions of Mr Weatherald in engaging separate solicitors (before this application was filed) and his recognition of problems which might arise should he and his sister remain as joint executors. In that affidavit he says that he is prepared to communicate through the parties' solicitors or through a single nominated email channel if direct communication with Carmen is not workable.
- [19] Mr Weatherald also argues that the cost of appointing an administrator is an unnecessary imposition on the funds of the estate. That is the ordinary consequence of appointment of an independent administrator but, in this case, the proposed administrator is the accountant who has been responsible for the affairs of the estate since the death of the testator. While some additional costs will be incurred by an administrator they will not be to the same extent in circumstances where someone completely unfamiliar with the estate was appointed.

Conclusion

- [20] I am satisfied that the conduct of Mr Weatherald has been inconsistent with the duties of an executor, that his proposals to perform those duties now do not carry weight in light of his previous conduct and the absence of any evidence to support the proposition that his situation will improve with treatment.
- [21] There has not been an efficient and satisfactory execution of the trusts so far and that is due, almost entirely, to the conduct of Mr Weatherald. I am satisfied that the welfare of the beneficiaries is opposed to his continued occupation of the office. I will make an order removing both executors and appointing Ms Haddon as administrator of the estate.

[22] I make the following orders:

- (a) The grant of probate of the will of Malcolm Rodney Weatherald (the deceased) dated 7 March 2007 granted by this Court to Carmen Lee Patterson and Marcus Damien Weatherald is revoked.
- (b) Carmen Lee Patterson and Marcus Damien Weatherald are removed and discharged as executors and trustees of the estate of the deceased.
- (c) Subject to the formal requirements of the Registrar, letters of administration of the estate of the deceased, with the will dated 7 March 2007, in respect of so much of the estate as remains unadministered, be granted to Eryan Haddon of Trekk Advisory as independent administrator.
- (d) Pursuant to s 68 of the *Succession Act 1981* (Qld), Eryan Haddon of Trekk Advisory be allowed to charge professional services fees for work undertaken acting as services rendered as administrator of the estate.
- (e) Any requirements for advertising the intention of Eryan Haddon of Trekk Advisory to obtain a grant of letters of administration with the will are dispensed with.
- (f) Pursuant to s 45(4) of the *Succession Act 1981* (Qld), all property of the deceased vest in Eryan Haddon of Trekk Advisory as administrator of the estate.
- (g) Within 14 days of the appointment of the independent administrator, the respondent deliver up to the independent administrator possession of all property, books, accounts, records and documents of or relating to the estate that are in his possession, custody or power, and provide:
 - (i) a full inventory of the personal property of the deceased situated at 181 Willetts Road, Bauple;
 - (ii) a full account of all rental income received by him in respect of the estate property, together with the rates, insurance and other outgoings of that property paid by or on behalf of the estate; and
 - (iii) the cheque issued by the Australian Taxation Office made payable to the estate.

Costs

- [23] When this matter was argued both parties made submissions as to the costs order which should be made. As Williams J pointed out in *Renton v Dresselhaus (No 2)*,⁴ this is an adversarial matter and is more appropriately dealt with in that way.
- [24] I am satisfied that the applicant's costs should come from the respondent rather than from the estate.

⁴

[2026] QSC 145.