

SUPREME COURT OF QUEENSLAND

CITATION: *In the Will of Clifford Stanley Perrin* [2026] QSC 247

PARTIES: **TANYA MAREE STANKOVICH**
(applicant)

FILE NO/S: BS 3669/26

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 24 September 2026 (*ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 24 September 2026

JUDGE: Treston J

ORDER:

1. Pursuant to s 6 of the *Succession Act 1981* (Qld), the force and validity of the last will and testament of the late **CLIFFORD STANLEY PERRIN** (the “deceased”) dated 3 May 2024 (the “Will”) be pronounced in solemn form of law.
2. Pursuant to s 6 of the *Succession Act 1981* (Qld), it be declared that, upon the proper construction of the Will, and in the events that have occurred:
 - (a) the applicant is entitled to a grant of probate of the Will as the named executor therein; and
 - (b) the applicant is entitled to the residue of the estate of the deceased as the sole beneficiary thereof pursuant to the Will.
3. Subject to the formal requirements of the Registrar, the applicant be granted probate of the Will as the executor named therein.
4. The costs of and incidental to this application be paid out of the estate of the deceased on the indemnity basis.

CATCHWORDS: SUCCESSION – ADMINISTRATION OF ESTATES – OTHER MATTERS – where the deceased fell victim to a ‘romance scam’ from 2012 until his death during which he purported to have met and married by proxy wedding a person named “Stella”– where deceased induced over that period to send money, gift cards and identity documents to Stella – where deceased left a will naming Stella his executor and beneficiary of his estate – where applicant daughter

named as beneficiary of a gift over clause for the entirety of the estate in the circumstance that Stella were to pass before the deceased – where Stella proved by the applicant to be a fiction – where applicant seeks an order following the rule in *Jones v Westcomb* (1711) Prec Ch 316 that the gift over clause operate in the circumstance that Stella be found not to exist – alternatively where applicant sought an order severing the portions of the will dealing with the appointment of Stella as executor and the disposition of estate assets to her – whether the gift over clause operates *a fortiori* in the circumstance that has actually occurred – whether false assumption as to a particular characteristic made by the deceased owing to the fraudulent conduct of Stella

Succession Act 1981 (Qld), s 6

Briginshaw v Briginshaw (1938) 60 CLR 336

Giles v Giles [1836] 1 Keen 685

Jones v Westcomb (1711) Prec Ch 316; 24 ER 149; (1710)

Gilb Rep 74; 25 ER 52

Kennell v Abbott (1799) 4 Ves. 802; 31 E.R. 416

Lord Donegal's Case (1751) 2 Ves.Sen. 407-408

Pettit v Mowder [1957] St R Qd 493

Posner v Miller [1953] P 277

Re Edwards State Trustees Ltd v Edwards [2014] VSC 392

Re Fox's Estate, Dawes v Druitt, Phoenix Assurance Co Ltd v

Fox [1937] 4 All ER 664

Re Stacey, deceased [1949] St R Qd 244

Re the Will of William Ian Southey [2025] VSC 801

Savage v Savage [2023] QSC 280

COUNSEL: H M M Smith, for the applicant

SOLICITORS: ROC Legal, for the applicant

- [1] Clifford Stanley Perrin (**Mr Perrin**) died in the Maryborough Hospital on Christmas Eve 2025. He was 84 years of age and divorced. In the years prior to his death, he was the victim of a scam which depleted his finances and left his estate with one asset being a small property in Hervey Bay, which itself was the subject of a reverse mortgage. This proceeding concerns a will which he made that is dated 3 May 2024, in which I find he appointed the scammer as the executor of his estate and gifted the estate to her. For the reasons which follow, I am satisfied that the appointment of the scammer, whose purported name is Stella Helena Perrin (nee Bennett), and the gift to her both failed.

Background

- [2] Mr Perrin was born on 24 February 1941. He did not finish high school but worked in a variety of different occupations during his working life. His father died in about 1986 and his mother in 2004. In the years prior to his mother's death, he was her full-time carer.

- [3] In 2005, he retired to a modest home in Point Vernon, Hervey Bay, where he lived until he went into hospital prior to his death. He was briefly married between April 1971 and June 1976. The marriage ended in divorce. His only daughter, the applicant to these proceedings, was born shortly after his marriage in 1971. However, whilst she was growing up, the applicant was told that her father was deceased. The applicant found out that that was untrue in her twenties, when her mother provided her with a copy of a birth certificate which recorded Mr Perrin as her father. Shortly after receiving her birth certificate, the applicant contacted Mr Perrin, but he denied that he was her father.
- [4] In around 2010, the applicant asked Mr Perrin to agree to some DNA testing. Mr Perrin agreed. The testing revealed that there was a 99.99 per cent chance that Mr Perrin was the applicant's father. The applicant made an attempt to build a relationship with Mr Perrin, but the relationship was not a particularly close one; they generally communicated by text messages or Facebook. Between about 2017 and 2019, Mr Perrin would sometimes send Facebook messages to the applicant, asking her for money and describing that he was in need of money because he was a pensioner. In 2019, he contacted the applicant complaining that his television had broken. She drove up to his house and took him a new television. Later that year, he expressed some dissatisfaction with her conduct because she would not give him money and subsequently sent her some unpleasant Facebook messages. After about 2019, it seems that he stopped contacting her entirely.
- [5] In about 2012, Mr Perrin befriended a local man who was a bus driver in Hervey Bay, Mr Kim. Mr Kim operated an on-demand bus service that picked up passengers from their homes and returned them there. He began picking up Mr Perrin about two or three times a week, and gradually they became friends. Mr Kim was kindly towards Mr Perrin, assisting him with small jobs around his home. He observed that Mr Perrin was a lonely man, that he lived alone, and he did not appear to have a regular circle of friends.
- [6] Unbeknown to both the applicant and Mr Kim, Mr Perrin did apparently have one other friend, a woman by the name of Stella Helena Bennett. From records obtained after Mr Perrin's death, it appears that Mr Perrin met Stella over the internet in about 2012. Stella told Mr Perrin that she was born in 1976, so at the time they met, she was apparently then aged about 36. She said that she was a former fashion model in New York from an upper middle-class family, and that she lived in the town of Massena in New York. At the time the relationship commenced, Mr Perrin was a 71-year-old pensioner living alone at the Point Vernon property. He had significantly impaired vision, such that he could no longer drive. He had never travelled to New York, and I find had never met Stella. Despite that, on 25 April 2013, in circumstances that I will come back to in more detail, Mr Perrin considered that he had married Stella.
- [7] Mr Perrin sent an email to a friend of his at around that time on 6 May 2013 which contained the heading, "[t]ake a seat before you read this, Pete", and a body which reads:

"Hi old mate

This is the most shocking piece of news you will get in a long time.
Look at the photo. This is my wife Stella Helina Perrin. We were

married in Messina New York on the 25th April. Stella was a top NY fashion model before retiring; now she is coming to Australia to become a housewife in Point Vernon. Better late than never.....

I will have a civil ceremony in Australia when she arrives next month”.

- [8] Attached to the email, was a photograph that was said to be of Stella. Without intending to be disrespectful to any party to these proceedings, the photograph does seem to depict a very young and certainly younger than 36, highly attractive woman, posing as what might be thought to be a lingerie model.
- [9] Mr Perrin apparently did not think it was unusual that he was not present for his own wedding. Stella told him that that they were married by proxy and subsequently sent him a copy of a marriage certificate, which for reasons I will come to shortly, I find to be a forgery. It is apparent from the large volume of text messages in evidence, that Mr Perrin never met the young woman in the photograph or, assuming that the young woman in the photograph is not in fact Stella, never met any person who was actually Stella. Around the time of Mr Perrin connecting online with Stella, Stella informed Mr Perrin that she had received a large inheritance from her father held in New York by a Zimbabwe-based company which she could not access until the tax on it was paid. She sought Mr Perrin's financial assistance and identity information in order to pay the Internal Revenue Service. She promised she would then move to Hervey Bay with the balance of the funds.
- [10] Over time it appears that Stella extracted various funds from the deceased. The evidence shows, for example, that she asked him to transfer funds to accounts in the name of other persons, to send her Bitcoin, to send her iTunes Gift Cards and Steam Wallet Cards, to provide cash to unspecified third parties and to mail new SIM cards or iPhones to her.
- [11] At different times she requested and obtained Mr Perrin's credit card information, his bank details, his myGov account details and identity documents. In 2014, Stella told Mr Perrin that she had moved to Kuala Lumpur. She also told Mr Perrin that she had become a Malaysian citizen.
- [12] Later, Stella told Mr Perrin that she could not access her inheritance due to Malaysian taxes and provided him with a document identified as an inheritance tax bond disclosure and a letter purportedly prepared by a company “MPI Generali Insurans Bhd”. Both of those documents have subsequently been revealed to be false documents; although, I should stress that there is no suggestion that the legitimate company associated with those documents had any part whatsoever in the production of the fraudulent documentation.
- [13] That is the general factual background to the proceeding.
- [14] I turn to the question of service. There was an application for substituted service upon Stella made in August 2026, in which Kelly J ordered that Stella be served by various email and other electronic means. Stella was so served and did not appear on the return of the application today. She was called three times outside of court and did not appear. I am satisfied that she was properly served.

- [15] I turn to the circumstances of the will. The will is dated 3 May 2024, although the evidence suggests that the actual day it was executed may have been on 4 May 2024. The will was witnessed in the presence of two justices of the peace. There is no known earlier will, and publication and advertising has not produced an earlier will.
- [16] The will appears to be a handmade document. It is prepared in two parts, section A and section B. Section A is said to outline specific legal requirements while section B is said to outline personal property and money disbursements as per Mr Perrin's wishes. Part A of the will revokes any previous wills and appoints Stella Helena Perrin, "my wife", to be executor and trustee. Stella is not identified by any address at which she resides, but is rather identified by a contact email. The will expressly records that Stella currently resides in Kuala Lumpur, Malaysia. No part of the will identifies clauses by number, but rather by dot points.
- [17] The fourth dot point under section A of the will reads:
- "In the unlikely event the said **Stella Helena PERRIN** is unable, through illness, injury or death, to undertake the position as **EXECUTOR**, I APPOINT **TANYA VIDA MAREE STANKOVICH**, MY DAUGHTER AS **EXECUTOR of Bonogin SE Queensland**".
- [18] The fifth dot point under section A of the will, then decrees that:
- " ... upon my death, **I BEQUEATH** the bulk of my **ESTATE**, including cash in hand, bank accounts, money held in credit cards, to my friend and best wife, **Stella Helena PERRIN**, currently resident [sic] of Kuala Lumpur Malaysia".
- [19] The will then provide at the sixth dot point:
- "If **Stella Helena PERRIN** should pass away before my death, then the contents herein of my entire estate will go to my **DAUGHTER TANYA VIDA MAREE STANKOVICH of Bonogin Qld**".
- [20] Section B of the will then sets out a list of persons and organisations that are to be contacted upon the deceased's death, listing for example, Centrelink at Hervey Bay, the Department of Births, Deaths and Marriages, and Queensland Transport. Section B also sets out a number of details pertaining to the payment of rates on the property at Point Vernon, the cancellation of a broadband network subscription, electricity, bank accounts, and matters of that nature. The details of part B do not need to be set out at length; suffice to say that much of what is contained in part B of the document is plainly not dispositive in nature; and is more in the form of a direction as to how an executor might attend to usual matters arising out of the administration of an estate.
- [21] I am satisfied that there are parts of the will that can be admitted to probate because I am satisfied that the document represents the deceased's last will and by its terms revokes any earlier wills. I accept that the will was duly executed in the presence of two witnesses. There is no evidence that the deceased lacked testamentary capacity when he made the will. Both of the persons who witnessed the will have attested properly to its due execution.

- [22] There will not, however, be a grant in favour of the first named executor Stella, nor any grant in respect of a disposition in her favour. That is because I am satisfied that Stella is either not a real person or does not exist at all. The reasons for me concluding that Stella does not exist as a real person include the following.
- [23] First, there is the, respectfully, highly improbable nature of the match in which a former New York fashion model, then apparently 36, would develop a romantic interest in a 71-year-old divorced pensioner living in Hervey Bay, whom she has never met. Amongst other things, respectfully, the photographic evidence does lend weight to that conclusion.
- [24] Second, there is the false documentation which Stella provided in relation to the marriage. Although there are different copies of the certificate of marriage in evidence, it can be accepted at least that:
- (a) the document is purported to be made under seal, but no seal is affixed;
 - (b) it is said to be issued in Fresno County of New York in circumstances where the court observes that Fresno County is in California;
 - (c) New York is referred to as New York State Republic, where it cannot be accepted that that is any proper characterisation of the State of New York; and
 - (d) the bride's name itself is misspelled on the document.
- [25] Most importantly, the solicitors for the applicant have confirmed with the Massena Town Hall in New York, that no certificate of marriage from that date between those persons is registered in New York.
- [26] Third, that the deceased and Stella were supposedly married without being present together at the time, suggests that no real persons were in fact married. One of the pieces of the deceased's own correspondence in fact suggests that they were married by the transfer of signatures sent to the Bureau of Births, Deaths and Marriage Marriages in New York, which cost the deceased \$700. As I say, I find that it is untrue that any such marriage took place by that method.
- [27] Fourth, there is the fact to which I have already referred, and that is that there is no evidence that the deceased ever met Stella in circumstances where they were apparently married for more than a decade.
- [28] Fifth, in addition to providing false documentation regarding the marriage, I find that Stella also provided false documentation regarding her purported inheritance, such as the document entitled "Inheritance Tax Bond Disclosure" from MPI Generali Insurans Bhd. In that regard, in evidence is documentation from the genuine company in Malaysia which identifies amongst other things that the letter is a forgery, the name of the company on that correspondence not being the name of the company as it existed at the date of the purported letter.
- [29] Sixth, when Stella was contacted after Mr Perrin's death and informed that she was a beneficiary under his will, the applicant asked Stella to simply prove her identity so that she could take the benefit under the will. Stella refused to do so and asked for money before she did. She then deleted the message exchanged with the applicant: I accept the applicant's evidence that that in fact occurred.

- [30] Seventh, during the Mr Perrin's lifetime, Mr Perrin told Stella on a number of occasions that she was the beneficiary of his estate. Her replies, which are in evidence, suggest that she was at least indifferent to Mr Perrin telling her she was a beneficiary. Rather, her replies suggested that Mr Perrin should not wait and should gift money to her immediately rather than waiting to die. This suggests to me that Stella knew she would not be able to take under his will because she knew she would not be able to prove her identity. The text messages in fact show that she repeatedly badgered him to get a reverse mortgage on his property so that she did not have to wait for the proceeds of sale of the property after his death.
- [31] Eighth, despite her claims that she was an American fashion model, her use of the English language in her text messages and other online exchanges rather suggests that English may not have been her first language.
- [32] Ninth, in May 2024, when the deceased tried to transfer money to an account in accordance with Stella's direction, his transfer was blocked by his own bank. A bank employee told Mr Perrin that the account to which he was sending money was associated with a scam. Over a long series of text messages, Mr Perrin suggested to Stella that she simply needed to prove her identity and explain that her bank account was legitimate. Rather than do so, Stella suggested to Mr Perrin that he ought to lie to his bank and tell the bank he was simply sending money to a family member who had a need for medical help. That she refused repeatedly to provide her identity suggests strongly that she could not do so.
- [33] In the circumstances, I conclude that the evidence strongly supports the inference that Stella had perpetuated a romance scam against the deceased.
- [34] I am satisfied and find that Stella is not a real person and never existed for any part of the extraordinary period of over a decade of the supposed relationship. I conclude therefore that her appointment as executor and any gifts to her failed: *Re the Will of William Ian Southey* [2025] VSC 801 (Goulden AsJ).
- [35] There are two alternative bases though for this conclusion. The first arises from the application of the rule in *Jones v Westcomb* (1711) Prec Ch 316; 24 ER 149; (1710) Gilb Rep 74; 25 ER 52, and the second from the application of one of the unusual categories of fraudulent conduct which may invalidate a whole or part of a will: *Kennell v Abbott* (1799) 4 Ves Jun 802.

The rule in *Jones v Westcomb*

- [36] I have already referred to the decision of *Southey*, where Goulden AsJ concluded that the status of the gift to a person named in the will of the deceased, depended on whether that person existed but could not be located, or whether the person did not exist, at least in the way contemplated by the deceased. There, her Honour concluded that it was relevant to the analysis that the deceased and the person had never met but had developed a relationship online. Factually, this case is the most similar to the one that is before me.
- [37] Based on the evidence before this court to which I have already referred, I am entirely satisfied that Stella as a person did not exist and did not exist in the manner as understood by the deceased. I recognise that that conclusion necessarily involves an implicit allegation of fraud and therefore, falls to be determined in accordance with

the principles of *Briginshaw v Briginshaw* (1938) 60 CLR 336. I have no hesitation in reaching the conclusion that the state of satisfaction in accordance with the *Briginshaw* principle is achieved. As such, Stella not being a person who exists or does not exist in the way contemplated by the deceased, her appointment as executor fails, as does the gift to her.

- [38] The gift over clause, however, in the part of the will to which I have already referred, operates on the specified contingency that if Stella should pass away before Mr Perrin's death, then the contents of the entire estate would go to Mr Perrin's daughter. It can be accepted that that contingency did not occur, but where I have concluded that Stella did not exist, the contingency specified in the gift over clause cannot ever have arisen. The applicant therefore refers me to the operation of the rule in *Jones v Westcomb*; which has been described in the following terms:

“The principle is applicable, therefore, only in those cases where the court, looking at all the relevant circumstances of the case, including, of course, the will itself, comes to the conclusion that the testator must *a fortiori* have intended the disposition over to take effect in the event which has actually happened, although it is not the event which he has specified in his will as the one in which the gift over is to take effect.”¹

- [39] The principles which arise from *Jones v Westcomb* were considered more recently in a case of *Re Edwards State Trustees Ltd v Edwards* [2014] VSC 392 by Justice McMillan. I gratefully adopt the helpful summary that the applicant provides arising out of the principles in *Edwards* as follows:

- (a) first, the question is, if the testator had contemplated the contingency that occurred, is it obvious that the testator must have intended that the gift over operate? In that respect, the rule is not an exception to orthodox principles of construction, but an application of those principles: *Edwards*, [178];
- (b) second, the requirement that only contingencies upon which the testator must *a fortiori* have intended the gift over to operate are saved operates to ensure that the court does not impute an intention to the testator, that is not supported by the tenor of the will, in light of the admissible extrinsic evidence: *Edwards*, [151];
- (c) third, to conclude that the rule applies, the court need not be satisfied that the testator intended the gift over operate on any contingency whatsoever. It need only be satisfied that the testator must have intended the gift over cover the contingency that actually occurred: *Edwards*, [159];
- (d) fourth, the rule requires the court to determine what the testator would have intended in events unforeseen, not what he did intend in the events he foresaw but for which he did not provide: *Edwards*, [164];
- (e) fifth, it is not appropriate to infer from the mere existence of a gift over cause that the real contingency guarded against was an intestacy and then imply that the gift over was to operate on any value whatsoever: *Edwards*, [174];

¹ *Re Fox's Estate, Dawes v Druitt, Phoenix Assurance Co Ltd v Fox* [1937] 4 All ER 664, 666 (Romer LJ), quoted with approval in *Re Stacey, deceased* [1949] St R Qd 244, 247 (Macrossan CJ).

- (f) sixth, only *a fortiori* contingencies gleaned from the will itself, read as a whole in light of any admissible extrinsic evidence, may be written into the will, being those that may be implied by necessary implication: *Edwards*, [177]-[178];
 - (g) seventh, that will be the case where the contingency actually contemplated raises the “ineluctable inference”, that the testator must *a fortiori* have intended the gift over to take effect on the contingency that actually occurred: *Edwards*, [146];
 - (h) eighth, there is a distinction between implying such contingencies and merely hypothesising as to whether the testator would have intended the gift over cause to operate in the event of the contingency which did arise: *Edwards*, [176];
 - (i) ninth, the rule in *Jones v Westcomb* may not be applied merely to bring about a result that the court considers fair: *Edwards*, [167]; and
 - (j) tenth, the rule falls to be applied according to the facts of each case: *Re Edwards*, [168].
- [40] Recently in this court in *Savage v Savage* [2023] QSC 280, Justice Burns considered the rule in *Jones v Westcomb* in the context of a gift over clause to be applied in circumstances where the deceased was murdered by a family member. His Honour observed that the precise scope of the rule in *Jones v Westcomb*, “remains elusive despite its antiquity”, and in the particular circumstances of that case, his Honour (at [13]) was unable to read the gift over provision in the will as though it was intended to cover any eventuality under which the primary gift did not take effect, nor that as a matter of necessary implication, the deceased must have intended that the gift to his daughter would pass to her children if he was murdered by her.
- [41] Accordingly, his Honour concluded that the rule in *Jones v Westcomb* had no application there. However, *Southey* is far more similar factually to the current circumstances. Goulden AsJ there considered the application of the rule where the gift over clause was expressed to apply unless the beneficiaries did not survive the deceased, but in that case, as I have already said, her Honour concluded that in fact the primary beneficiary who was to take did not exist at all.
- [42] Here, the wording of the specified contingency is, “If **Stella Helena PERRIN** should pass away before [Mr Perrin’s] death”. The wording in *Southey* was functionally the same. Whilst I refer to, without repeating the principles of the construction to which her Honour referred at paras [29] and [30], importantly, her Honour concluded at para [33] that the clear language used in the will demonstrated an intention to avoid an intestacy. I conclude that there is sufficiently clear language that is presently used in the current circumstances.
- [43] Using the language from *Edwards* and adopted in *Southey*, the inference that the gift over was to take effect if Stella never existed was in fact ineluctable. So, whilst I accept, as Burns J observed, that the precise scope of the rule remains elusive, for the rule to apply, it can be accepted that there are circumstances where the court might be satisfied, as here, that the testator must in fact have intended the gift over to cover the contingency that actually occurred. Aside from the wording of the clause itself, which is functionally indistinguishable from the wording in *Southey*, there are other factual matters which I conclude lend weight to the ineluctable conclusion.

- [44] First, Mr Perrin was not close to the applicant and indeed did not have much contact with her for some years; nevertheless, only a year and a half prior to his death, he made an active decision to pass the entirety of his estate to her in the event that Stella should predecease him. In that way he actively turned his mind to a gift over to his daughter, and that is a powerful consideration.
- [45] Second, Mr Perrin identified that Stella had no address within Australia, but in fact resided in Kuala Lumpur. He turned his mind to the prospect that she might be unable through either illness, injury or death to undertake her position as executor. Although he described this as an unlikely event, he nevertheless still appointed his daughter as the executor in the event that Stella was unable to accept the position.
- [46] Third, Mr Perrin in what is obviously a handmade will, gifted to his daughter, “[his] entire estate”, suggesting he turned his mind to the disposition of the entirety of his assets in favour of her so as to prevent an intestacy.
- [47] Fourth, it seems likely to me that during different times of his life, Mr Perrin in fact had become suspicious of Stella. Amongst the hundreds of emails passing between them and thousands of text messages, is an email which he sent dated 31 January 2015, in which he wrote to an organisation noted only in the email as “support-malaysia”, in which he identified that he had reason to believe that Stella had been involved in fraud and identified that she could be operating under a number of different names.
- [48] Almost 10 years later, much closer to his death, on 9 August 2024, Mr Perrin again recorded a number of concerns, including that he believed his wife was using various names for herself, that she had stolen his identity online and had used his information to commit fraud offences. He recorded his suspicion that his wife was part of a gang involved in a number of extortion cases in Hervey Bay, and that although his wife had said she lived in Malaysia for the past 10 years, he was unable to determine precisely where she lived, describing that he thought she lived, “in a dingy little three-star motel outside the CBD of Kuala Lumpur, somewhere near horse stables”.
- [49] Although it may seem that Mr Perrin’s suspicions were somewhat less than might have been held by most independent observers, it cannot be said that he did not have genuine suspicions over the decade or so during which he believed himself to be married to her. Having regard to the depths of the suspicions expressed by him in August 2024, slightly more than a year prior to his death, and only months after he made the will in May 2024, I am satisfied that that combination of suspicions coupled with the clear words used in the will, being an intention to favour his daughter in the event of Stella's death, enables the court to reach the ineluctable conclusion that Mr Perrin would in fact have intended his daughter to take his estate in the event that he had foreseen that Stella was not a person who in fact existed. In the highly unusual circumstances of this case, I am prepared to conclude therefore, that the rule in *Jones v Westcomb* does in fact apply.

Severance on the basis of a false assumption

- [50] I turn to the alternative ground that the provisions of the will in favour of Stella should nevertheless be severed on the basis of fraud. Fraud has been a basis for setting aside a will since the 1700s: *Lord Donegal’s Case* (1751) 2 Ves.Sen. 407-408; however, it is a little used tool. Relevantly, the category of fraudulent conduct, which may

invalidate part or all of the will, is where a false assumption of character or identity arises. The authority for this is *Kennell*, which I have referred to above. *Kennell* was a bigamous marriage case in which the husband married a second wife in 1783, knowing he had been previously married in 1775 and that his first wife was still living. The second wife, as I shall call her, died not knowing of the invalidity of her marriage and leaving part of her estate to her bigamous husband. The court concluded that where the legacy was given to a person on the basis that it was assumed the person held a particular characteristic and that characteristic had been falsely assumed, the false assumption can be assumed to have been the motive for the bounty and be liable to set to be set aside.

- [51] *Kennell* was referred to favourably in 1953 in *Posner v Miller* [1953] P 277, where Karminski J referred to *Kennell* and to another case of *Giles v Giles* [1836] 1 Keen 685, in which Lord Langdale said:

“It is clear that, in point of law, a mere misdescription of a legatee will not defeat the legacy; and it is equally clear that a legacy given to a person in a character which the legatee does not fill, and by the fraudulent assumption of which character the testator has been deceived, will not take effect. That was the principle upon which the case of *Kennell v. Abbott* was decided, and the soundness of that decision has never been questioned.”

(footnote omitted)

- [52] I accept that there are few other modern authorities on the false assumption principle. But it seems to me that the position has not been substantially doubted since the statement of principle in *Kennell*, and had I not otherwise been satisfied as to the application of *Jones v Westcomb*, I would have made orders severing those parts of the will that had been affected by Mr Perrin’s false assumption of the character or identity of Stella.
- [53] I should mention for completeness that counsel for the applicant also took me to the decision of the Full Court of the Supreme Court in the matter of *Pettit v Mowder* [1957] St R Qd 493 (Stanley J, Mack J, Hanger J) in which the Full Court did not doubt the correctness of *Posner* to which I have just referred, although I think it is fair to conclude, would not have reached the conclusion which I have reached on the above application of *Jones v Westcomb*.
- [54] I observe, merely for completeness' sake, that the Full Court in *Pettit* was not taken to the principles in *Re Fox’s Estate* or *Re Stacey*, to which I referred earlier in these reasons. So, to the extent that *Pettit* appears to be authority against *Jones v Westcomb* in the way in which I have decided this case, I prefer to follow the authorities of *Re Fox’s Estate* and *Re Stacey*, and from them in turn, *Edwards* for the reasons to which I have already referred.

Conclusion

- [55] Two alternative drafts were provided to me depending on whether I decided the matter in accordance with *Jones v Westcomb* or the alternative false assumption case.

[56] Having decided as I have, that the appointment of, and gift to, Stella has failed, it is appropriate that the orders of the court be as follows:

1. Pursuant to s 6 of the *Succession Act 1981* (Qld), the force and validity of the last will and testament of the late CLIFFORD STANLEY PERRIN (the “deceased”) dated 3 May 2024 (the “Will”) be pronounced in solemn form of law.
2. Pursuant to s 6 of the *Succession Act 1981* (Qld), it be declared that, upon the proper construction of the Will, and in the events that have occurred:
 - (a) the Applicant is entitled to a grant of probate of the Will as the named executor therein; and
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3. Subject to the formal requirements of the Registrar, the Applicant be granted probate of the Will as the executor named therein.
4. The costs of and incidental to this application be paid out of the estate of the deceased on the indemnity basis