

22/23

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 7731/08


IN THE WILL of KAREN LEE MAHLO deceased

Last Address: 23A William Street, Moffat Beach in the State of Queensland

AFFIDAVIT

JOHN MICHAEL HEHIR of 48-50 Sugar Road, Maroochydore, financial advisor, states on oath:

1. I am a Respondent in this proceeding.
2. I was born on 14 June 1960.
3. Karen Lee Mahlo ("Karen") died on 28 May 2008 as evidenced by the Death certificate filed in this proceeding (ECourt Document No 4).
4. Karen and I had commenced and carried on a *de facto* relationship from September 2006 to her death.
5. I met Karen for the first time on or about 30 March 2006. Karen was a client of the financial planning business in which I was engaged.
6. On 5 September 2006, I telephoned Karen to wish her a happy birthday. We started to develop a personal relationship from this time.
7. On about 25 November 2006, I moved in with Karen at 23A William Street, Moffat Beach.
8. Karen had a pattern of depression during the time I knew her.
9. On 5 October 2006, Karen was suspended from Queensland Health at Nambour pending a psychological assessment.
10. From 23 October 2006, Karen was reinstated to work.
11. On 16 January 2007, Karen's general practitioner and friend, Dr Steve Phillips, arranged for Karen to see Dr Clive Fraser, psychiatrist, on 17 January 2007. From about this time, Karen saw Dr Fraser regularly.
12. In about April 2007, Karen attempted suicide by cutting an artery in her leg.
13. I bandaged Karen's wound. The wound was not serious enough to warrant going to hospital.
14. In August 2007, Karen attempted suicide for the second time. Karen had cut her wrist.
15. In about September 2007, Karen cut her hair in an unusual fashion. She had long hair at the time and cut it very short. She also bleached her scalp with household bleach.
16. I spoke with Dr Fraser about the incident.
17. Dr Fraser said to me words to the effect:
"I am very concerned about Karen. I would like to commit her. Even if we need to do it against her Will."



Deponent

AFFIDAVIT


Filed on behalf of John Michael Hehir
Form 111 - R.605




Witness

Munro Thompson Lawyers
Level 2, 77 The Esplanade, Mooloolaba
Telephone: 5444 3466
Facsimile: 5444 2150

18. I thought it would be better to talk to Karen about it. So I raised it with her. We had a lengthy conversation in which we said words to the following effect:
Hehir: *"Dr Fraser is concerned about you. He thinks you need to check in to Buderim Private."*
Mahlo: *"Ok, I will go tomorrow."*
19. I took Karen to Buderim Private the next day. She stayed there for 2 or 3 weeks.
20. On 16 December 2007, Karen returned to work. She worked at Redcliffe Hospital as Deputy Executive Director of Medical Services.
21. From about December 2007 to April 2008, Karen was in good spirits and seemed to be much happier.
22. On 14 February 2008 ("the 14 February 2008 Will"), Karen made a Will and appointed me as Executor of her Estate and made provision for me as a beneficiary.
23. I only became aware that Karen had made and signed the 14 February 2008 Will after that date.
24. Exhibited to this Affidavit and marked "JM1" is a true copy of the 14 February 2008 Will.
25. In about March 2008, Karen and I discussed me renting a unit. I had expressed my concerns at Karen's drinking and smoking. For these reasons, I decided I would like some space.
26. On about 2 April 2008, I arranged to rent a unit at Cotton Tree. I stayed at the unit that night.
27. On 3 April 2008, I returned to 23A William Street for the night.
28. Between 2 April 2008 and 11 April 2008, I stayed at the unit for 2 nights. The remaining nights I slept at 23A William Street.
29. On the night of 11 April 2008, Karen again attempted suicide.
30. At about midnight I received a telephone call from Karen. Karen said words to the effect: *"I just want you to know that I love you and to say goodbye."* Karen was taken to Caloundra Hospital. At about 3.00am, Dr Luke Edmunds advised me that Karen was stabilised and would be airlifted to Royal Brisbane Hospital. The airlift happened at about 6.00am.
31. On 14 April 2008, Karen was admitted to the New Farm Clinic for treatment of depression. Karen had been released from the Royal Brisbane Hospital into my care to go to the New Farm Clinic.
32. On about 18 April 2008, Karen discharged herself from the New Farm Clinic and returned to 23A William Street.
33. From that time until Karen died, I still spent the majority of nights at 23A William Street. I slept at the unit 2 or 3 nights a week.
34. The night of 24 May 2008 was the last night that I stayed with Karen at 23A William Street, Caloundra.
35. Early in the morning on 28 May 2008, Karen committed suicide.


.....
Deponent


.....
Witness

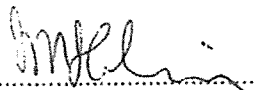
36. The Applicant in this matter seeks to prove as Karen's last Will an alleged document which is dated 16 May 2008 ("the 16 May 2008 document") which was allegedly found on Karen's computer. I am informed by my solicitors that notwithstanding a request to inspect the computer harddrive, which is in the possession of the Applicant's solicitors, this request has not been acceded and has been expressly refused. The foreshadowed affidavit by the forensic computer expert retained by the Applicant has not been produced at the date of me swearing this affidavit. However a Report has been received by my Solicitors by email at 1.16pm on 16 January, 2009 and this Report will need to be reviewed by a Forensic Expert to be engaged by me and in any event raises many factual issues of contention.
37. Exhibited to this Affidavit and marked "JMH2" is a true copy of the 16 May 2008 document.
38. I have grave concerns as to Karen's capacity at the time the 16 May 2008 document was allegedly made. At this time her psychiatric condition continued and she also continued to consume alcohol, at times to excess.
39. Exhibited to this Affidavit and marked "JMH3" is a true copy of the Autopsy report and associated Police Report which provide further background detail.
40. I note that the Applicant disputes the validity of the 14 February 2008 Will on the basis of alleged undue influence of Karen by me (ECourt Document No 6 – Affidavit of Margaret Laurelle McNamara – paragraph 7. I deny any such assertion.
41. This affidavit does not address the whole history and knowledge of my life and dealings with Karen and is provided to demonstrate that there are substantial issues of factual controversy in this matter necessitating a trial before final determination can be made as to which document should be declared for as the Last Will of Karen.
42. I have reviewed the Affidavits filed in support of this Application and have the following preliminary comments to make in respect to those affidavits.

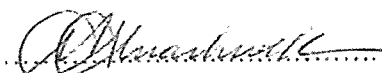
Affidavit of Brett John Mahlo Dated 7 November 2008

43. In regard to paragraph 11: I deny that paragraph to the extent that it implies that I said to Ceinwen Mahlo that there were two Wills.
44. In regard to paragraph 13: I deny that I said to Brett Mahlo that there were two Wills.
45. I deny that I said to Brett Mahlo that the night before Karen's death Karen and I had a big argument on the telephone. I did not speak with Karen by telephone on the night before she died (being the night of 27 May 2008).

Affidavit of John Walter Mahlo Dated 23 October 2008

46. In regard to paragraph 4: Karen's two children are from her second marriage, not her first.
47. In regard to paragraph 6: Karen's family had seen the Mini Cooper previously and the vehicle was about one year old, otherwise, I cannot comment on this paragraph.
48. In regard to paragraph 9: I recall Karen meeting John Mahlo at the airport. On the way to the airport, Karen returned to me some clothes of mine which she had ironed for me.

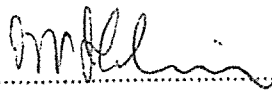

.....
Deponent

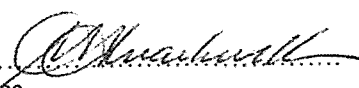

.....
Witness

49. In regard to paragraph 12: Ben did not visit on the Tuesday or Wednesday as alleged. He had been staying at the house since the previous Friday, 9 May 2008.
50. In regard to paragraph 18: John Mahlo states that he thought Karen was in a good frame of mind. I was in telephone contact with Karen everyday during John Mahlo's visit. Karen and I had a telephone conversation to the effect:
- Karen: "I am taking Dad with me tomorrow to the appointment with Clive." (Clive being Dr Clive Fraser)*
- John: "Have you told him everything?"*
- Karen: "I had a long conversation with him today and told him everything."*

Affidavit of Beverley Anne Mahlo Dated 23 October 2008

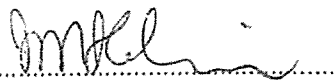
51. In regard to paragraph 7: to my knowledge Karen spoke with her mother two or three times during 2007.
52. Karen was a client of the financial planning business I was engaged in, but did not consult with me personally until more than twelve months later. It was at that time that she became interested in property investment.
53. In regard to paragraph 11: Karen was suspended about 2 years after she started at Nambour. I understand that she did not tell her family about the suspension until about March or April 2007.
54. In regard to paragraph 13: I understand that Karen did not speak with Beverley Mahlo from the date of the 50th birthday party which Beverley did not attend, to the date of Karen's death. When contact was made between Karen and Beverley, Karen usually asked me to telephone Beverley for her.
55. I did not secretly tape any meetings as alleged. I taped one meeting where the tape recorder was placed in the centre of the table.
56. In regard to paragraph 15: during the visit Karen and I made to Orange referred to in this paragraph, we met with Beverley on four occasions and on one of those occasions she accompanied Karen and I to have coffee at a cafe.
57. In regard to paragraph 19: I rang Beverley about three times over three months. The last call was the night before the party, as Wade had told me that day that Wade and John were coming to the party. Beverley did not tell me that she was annoyed by my calls.
58. In regard to paragraph 21: I was not aware that Beverley rang Karen on the night of her party. Karen did not mention such a call to me. The next morning, Karen said words to the effect "I can't believe none of my family came to the party or even rang me".
59. In regard to paragraph 22: Karen was initially upset at me for organising the party. However, she eventually asked to see the invitation list and added about 30 names to it. Karen took over the organisation of the catering and the alcohol for the party. She appeared to enjoy the party.
60. Wade did not tell me that he was not coming. During the last conversation I had with Wade before the party at about 2pm, Wade told me he was coming to the party. Wade did not answer his mobile telephone or his land line when I tried to call him at about 4pm.

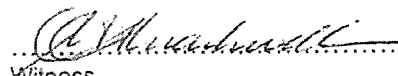

Deponent


Witness

At about 4.30pm, Karen, Alan and Julie Kerrigan and I realised that Karen's family were not going to come.

61. In regard to paragraph 24: I do not agree with this paragraph. Karen told me that Brett had rung her at home about the idea of purchasing John and Beverley a house. I tried to ring Brett to talk about it. I spoke with Ceinwen.
62. Ceinwen said to me words to the effect:
"The idea of buying the house was sprung on us by Wade. You should write an email to Brett."
63. I wrote an email to Brett explaining some tax advantages of retaining the house in the name of the children.
64. In regard to paragraph 26: Beverley did not ring me at work. Karen asked me to telephone Beverley. Beverley had been ringing Karen's mobile while Karen was in hospital and Karen did not answer the calls.
65. In about September 2007 at about 8pm, at Karen's request, I telephoned Beverley from the hospital to advise her of Karen's circumstances.
66. I did not ask Beverley to send flowers to my workplace.
67. In regard to paragraph 30: I had not booked Karen in using my surname. As far as I know, Karen saw to the completion of the admission forms herself.
68. In regard to paragraph 33: this is the same conversation as referred to in paragraph 65.
69. In regard to paragraph 43: this alleged conversation is not consistent with paragraph 18 of John Mahlo's affidavit.
70. In regard to paragraph 48: I had been living with Karen for about 16 months before she made her Will dated 14 February 2008.
71. I did not give Anna a list of things to do or not do.
72. The list referred to in this paragraph was a list made by Karen in about September 2007. The list was made at the suggestion of Dr Clive Fraser and nurse Christine Troy-Perry. Karen used the list to try to simplify one of the areas of stress in her life, namely Anna's behaviour.
73. I disagree with the paragraph to the extent that it implies that the statements allegedly made by Anna are factual.
74. In regard to paragraph 52: this paragraph is untrue. I caused an employee of the financial planning business to telephone AAMI, who were the insurers of the Mini Cooper. I arranged for the insurance to continue. I continued to meet the cost of the insurance until Gary Lanham advised me that there was another policy in place.
75. In regard to paragraph 53: I am the Executor named in the most recent signed Will. I considered that I was entitled to make the funeral arrangements. However, all I wanted was to be involved in the process and to have the opportunity to speak at Karen's funeral.
76. I deny that I discussed with Beverley the amount of the gift in Karen's Will to Beverley and John Mahlo.

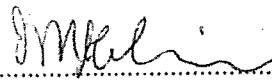

Deponent

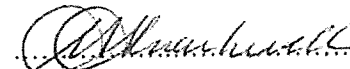

Witness

77. In regard to paragraph 54: I did not attend the funeral directors place of business to complain as alleged. After the funeral, I complained to a member of the staff of the funeral directors that they had not mentioned the wake I had organised at the RSL Club, despite having earlier agreed to do so. I was told that Anna had asked them not to mention it.
78. In regard to paragraph 55: my mail had not been diverted as alleged. I did not divert my mail. To the best of my knowledge, I am the only person entitled to divert mail addressed to me.
79. In regard to paragraph 56: after Karen's death I arranged the redirection of her mail as I am the Executor of her Will. The redirection was effective only for a matter of days. After that I telephoned Australia Post to query why the mail redirection was not effective. I was told that the redirection had been cancelled, despite there being no record of why and no one with the authority to do so other than myself.
80. In regard to paragraph 57: I deny the paragraph to the extent that it implies that I interfered with the mail in the mailbox at 23A William Street.
81. In regard to paragraph 58: I deny the paragraph to the extent that it implies that I had a conversation with Wade to the effect of that alleged.
82. I did not instruct the builders of Karen's investment properties to pour the slab after Karen's death. I had instructed the builder to proceed with the lodgement of plans with Council. The plans had already been lodged and the necessary fees paid.

Affidavit of Jennifer Christine Ruhno Dated 24 October 2008

83. In regard to paragraph 6: it was in the later part of 2007 that Karen considered investment in the properties referred to in this paragraph.
84. In regard to paragraph 13: I deny that I constantly telephoned Jennifer's house. However, I was concerned about Karen's health at the time and because of that I wanted to stay in touch with Karen.
85. In regard to paragraph 14: I went to Orange on the occasion referred to in that paragraph because Karen telephoned me and asked me to go. At about 5pm on the day of Andy's funeral, I arrived at Orange. Wade picked me up from the airport and took me to the hotel where the wake was being held. Karen and Jennifer were already at the hotel.
86. From the wake, Karen and I proceeded to Wade's house. On the way, we dropped Jennifer off at her house.
87. I recall that Karen had her clothes packed in the car when I arrived at the hotel.
88. In regard to paragraph 15: I did not have a conversation with Jennifer as alleged.
89. I did not spend as much time that evening with Jennifer as is implied in that paragraph.
90. Jennifer drank heavily during the evening referred to in that paragraph.
91. In regard to paragraph 21: After her hospitalisation in April 2008, Karen was not able to remember anything until two days after she awoke in The Newfarm Clinic. I remember later showing Karen the photographs I had taken of her while in the intensive care ward. Karen said to me words to the effect "I can't remember any of this". Karen asked me to tell her the events of her stay in hospital.


.....
Deponent


.....
Witness

42

Affidavit of Ceinwen Barbara Milford Mahlo dated 7 November 2008

92. In regard to paragraph 9: I did not mention the alleged second Will to Ceinwen.
93. Until 24 June 2008, when my solicitor provided me with a copy, I had not seen the alleged second Will.

Affidavit of Diane Stubbs dated 26 November 2008

94. In regard to paragraph 10: Karen had told me that she did not want to talk to anyone. If I answered a telephone call to Karen's house, I asked who they were so that I could tell Karen. Karen would then decide whether to take the call.
95. In regard to paragraph 11: It is true that Karen told me that I could tell Diane everything. Karen did not want to take Diane's call that day.
96. I did not tell Diane details of Karen's financial affairs.
97. I did not discuss Karen's suicide attempts with Diane. There had been no suicide attempts at the time of the call. The first suicide attempt was in about April 2007.
98. I did not refer to a firearm. None of Karen's suicide attempts involved a gun.
99. In regard to paragraph 12: this paragraph is not true.
100. In regard to paragraph 13: I understand that Diane did send the email referred to. At about the time of the email, Karen said to me words to the effect "Di is having a party. I really don't want to go but I will give her a call on the day."
101. I did not screen Karen's emails. The email address referred to was mahlo@flexinet.com.au. The emails to the address were received on Karen's home computer.
102. The only reason that Karen obtained the new email address was because she changed from dial-up internet connection to high speed broadband.
103. In regard to paragraph 15: Karen was angry about the party. She left to stay with Luba for one night. Karen eventually came around to the idea of the party.
104. In regard to paragraph 16: I did not prevent Diane from speaking with Karen.
105. In regard to paragraph 17: this paragraph is not true.
106. In regard to paragraph 18: During a visit with Clive Fraser, Clive suggested I give tasks to Karen each day to enable her to achieve goals. This is the reason the list referred to in this paragraph was created.
107. In regard to paragraph 21: I recall only one occasion during my relationship with Karen that Diane visited. That occasion is the one referred to in Diane's affidavit as being in about July 2007. I cannot disagree with that estimate of the date.

SWORN by JOHN MICHAEL HEHIR on:
at *Mooloolaba*

16 January 2009

in the presence of

JM Hehir
Deponent

H Ann Markwell
Barrister/Solicitor/Justice of the Peace
Commissioner for Declarations

Heather Ann Markwell
"C.dec" Reg. No. 6017

