



## CAN A TEXT MESSAGE WITH A SMILEY FACE COUNT AS A VALID WILL?

A recent Queensland Supreme Court decision held that an unsent text written by the deceased on his mobile phone with a smiley face was his last Will and Testament.

The deceased indicated in the draft message, written before he took his own life, that he wanted to leave his estate to his brother and nephew instead of his wife and son.

The deceased's wife applied to the Supreme Court for a grant of administration on intestacy, where she claimed that the text message was not valid as it was never actually sent.

In her ruling, Justice Susan Brown said there were a number of elements in the unsent text message that suggested it was a valid Will, such as instructions on where his ashes will be placed, as well as an order that his wife "will take her possession only".

"The informal nature of the text does not exclude it from being sufficient to represent the deceased's testamentary intentions," said the judge. She also ruled that suicide does not count against the Deceased's intention to have the text message operate as his Will.

"The terms of the text message and his specification that it was "my Will" and that it addressed the disposition of his assets shows that the deceased appreciated the significance of what he was doing by creating the text message," she added.

Despite the ruling, the Judge found that the deceased's wife could make a family provision claim.

Many consider their Wills to be a document that explains how to divide up their property on death, but a poorly made Will can lead to confusion, division in the family and unnecessary expense at an already difficult time for those close to you. It is always advisable to seek assistance in drafting your Will by a Lawyer to ensure your wishes are put in place.

For more information or professional advice on preparing and executing Wills, please contact our Estate Planning specialists.

Author: Kanchana Dissanayaka