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Previously invalid iPhone will valid in dispute over $10m estate

By Keeli Cambourne, Deputy Editor, SMSF Adviser and Matthew Burgess, Director, View Legal

A will made on an iPhone has been declared valid in a recent appeal.

In Wheatley v Peek [2025] NSWCA 265, the court confirmed that the iPhone note should in fact be treated as the deceased's will and the original decision in Peek v Wheatley [2025] NSWSC 554 be reversed.

Matthew Burgess, director of View Legal, said this decision re-confirms that courts can recognise informal statements as valid testamentary documents if it can be proven that the deceased intended the relevant documents to in fact serve as their last will.
"[This is] even when basic widely known requirements, such as being signed by the willmaker and witnessed by two independent adults, are not met," Burgess said.

"While these types of cases are perhaps welcomed by lawyers specialising in the area of making the various court applications, the case is arguably a timely reminder of the costs – both financial and emotional – and lengthy delays that can be triggered by a failure to strictly comply with the statutory requirements to make a valid will."

Burgess added that it is also a reminder to all advisers of the damage that can be caused in failing to proactively work to ensure clients have up-to-date and fully legally documented estate plans.
"Importantly, similar requirements, although generally largely mandated by trust deeds, are also relevant in wider holistic estate planning areas. For example, for superannuation fund members wishing to make enforceable binding death benefit nominations," he said.

In the original case it was confirmed that the deceased, Colin Peek, left a digital note on his iPhone (titled 'the last will of Colin L Peek') setting out how his estate should be divided, which was created only days before his death.

A friend and lawyer of Peek acted on behalf of the primary beneficiary under the iPhone note will. The primary beneficiary was another friend of the deceased entitled to in excess of $10 million if the iPhone will was valid.

The solicitor also stood to receive an entitlement of more than $300,000 if the electronic note was held to be valid.
The family – who would inherit under the state-based intestacy regime if the iPhone note was held to be invalid – argued (successfully) that the note was simply a "working document" and never intended to amount to a final (informal) will.

"In confirming that the deceased had not intended the document in the notes section of his iPhone to operate as his will, the court in the initial decision relevantly noted a number of key points. Firstly, lawyers

need to be acutely aware of the risk posed to the administration of justice where they choose to act in proceedings and the lawyer also has a personal interest in the outcome of the case (see Barrak Corporation Pty Ltd v Kara Group of Companies Pty Ltd [2014] NSWCA 395)," Burgess said.

"Here, the relevant lawyer had a clear conflict between his personal interests and his overriding duty to the court and the administration of justice, as he had a personal interest in the outcome of these proceedings as a beneficiary under the iPhone will, was a material witness in the proceedings, and was acting for a party in the proceedings."

Furthermore, Burgess noted, while not passing comment on whether the lawyer had engaged in professional misconduct, the court specifically highlighted that the decision to discuss with another key witness how they would each testify in relation to certain evidence was improper and seriously undermined the probative value of the evidence, given the court could not be certain as to the extent to which their recollection of events was truly independent (see Day v Perisher Blue Pty Ltd (2005) 62 NSWLR 731).
"The key element in this case was whether the deceased intended the iPhone note to be his last will, taking into account the document itself as well as evidence of the manner in which the document was created," Burgess said.

"Additionally, the testamentary intentions of the deceased had to be considered, including evidence of statements made by the deceased as well as any other matters relevant to that question and the fact that the relevant intention need not exist at the time of the document's creation so long as the document was subsequently adopted by the deceased as their final will through words or conduct (see Kemp v Findlay [2025] NSWCA 46)."

Ultimately, the court rejected in the first instance that the iPhone note was a last will and testament based on a number of reasons, however, in the appeal the decision was reversed most importantly as the court deemed that the note was written with finality and formality.

"[The note] included an emboldened heading of 'Last Will of Colin L Peek' which was considered to be an initial powerful indication that it operated as the last will," Burgess said.

"Furthermore, the note was dated, which 'is often an indication that the document is in its final form and intended to be operative' (see Twemlow v Kiepas [2004] NSWSC 452), and not only a draft or a set of instructions. The abbreviated initials 'CP' at the end meet the criteria for a signature and plainly a mark of assent, and more than simply a note to himself, providing a further indication that it was in its final form."
Additionally, the terms of the note pointed (which the court concluded did adequately deal with all assets, including those owned via trust and company structures) strongly in favour of a conclusion that it was intended to operate as the will 'without more'.

"The court also stated that while the conduct of the deceased's lawyer was inappropriate, it did not in fact have any material impact on any relevant question about the effect of the note, given it was clear the deceased had authored the note and the lawyer had no role whatever in its creation, nor any idea prior to the deceased passing that it existed," Burgess said.

"In particular, the court noted that inferences drawn against the lawyer and the primary beneficiary under the note in the initial trial had 'gone too far' (see Kuhl v Zurich Financial Services Australia Ltd [2011] HCA 11), such that a positive inference cannot be drawn from the silence of a party to the proceedings, if the

evidence does not otherwise admit of a rationally drawn inference (see SSABR Pty Ltd v AMA Group Limited [2024] NSWCA 175)."
Moreover, the court stated that the context of the creation of the note immediately after the deceased endured a near-death experience was extremely relevant, while the deceased's failure to send the note to others was consistent with a demonstrated reluctance to engage in discussions about his will.'

"The unchallenged evidence that the deceased, having completed the note, also stated to his housekeeper that he had finalised his will was an unequivocal and unambiguous representation of what the deceased believed he had done," Burgess said.

"This was supported by other extrinsic evidence such as the deceased relaying to the primary beneficiary under the note will that he would 'shortly receive a significant amount of money'.

"The case ultimately serves as (another) reminder that the failure to comprehensively implement legally valid estate planning arrangements will often be the catalyst for protracted proceedings, where the only certainty is the professional fee bonanza bestowed on the advisers."