

## NOTICE OF APPEAL

### COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal  
Registry Sydney  
Case number 2023/00093737

FILED

23 MAY 2023



### TITLE OF PROCEEDINGS

Appellant **Rose Marie Wild**



First respondent **Dominic Meduri**

Number of respondents (if more than two) 3

### PROCEEDINGS IN THE COURT BELOW

Title below Rose Marie Wild v Dominic Meduri & Ors  
Court below Supreme Court of New South Wales  
Case number below 2020/239852  
Dates of hearing 1, 2, 3, 8, 9, 10, 21 November, 6, 7, 8, 13 December 2022  
Material date 23 February 2023  
Decision of Hallen J

### FILING DETAILS

Filed for **Rose Marie Wild**, appellant  
Legal representative Anthea Jane McIntyre, McIntyre Legal  
Contact name and telephone Anthea Jane McIntyre, Tel: [REDACTED]  
Contact email [REDACTED]

### HEARING DETAILS

This notice of appeal is listed for directions at

9am on 14/6/23

### TYPE OF APPEAL

Probate

### DETAILS OF APPEAL

- 1 This appeal is brought under section 101(1) of the *Supreme Court Act 1970* (NSW).
- 2 This notice of appeal is not filed pursuant to leave to appeal.

- 3 The appellant has filed and served a notice of intention to appeal, which was served on the prospective respondents on 22 March 2023.
- 4 The appellant appeals from the whole of the decision of the Honourable Justice Hallen below.

#### APPEAL GROUNDS

- 1 The trial judge erred in finding that the late Elisabetta Meduri ("**the deceased**") had testamentary capacity when she made the Will dated 18 September 2009 ("**2009 Will**").
- 2 The trial judge erred in finding that the deceased knew and approved the contents of the 2009 Will.
- 3 The errors in the trial judge's findings the subject of Grounds 1 and 2 above were caused, or contributed to, by his Honour:
  - a) failing to give sufficient weight to the expert medical evidence of Professor John Watson AM (Neurologist) and Clinical Associate Professor Christopher Ryan (Psychiatrist), who were both jointly instructed by the appellant and the first and second respondents;
  - b) failing to give sufficient weight to the evidence of:
    - i. Dr Mariam Joseph
    - ii. The appellant
    - iii. Alan Wild
    - iv. Anthony Meduri
    - v. Jake Meduri
    - vi. Kerry La Rue
    - vii. David Di Maria;
  - c) giving excessive weight to the evidence of:
    - i. John Puleo
    - ii. Dr Francesco Romeo
    - iii. The first respondent
    - iv. The second respondent
    - v. Graham Ball

vi. Cathy Butera

vii. Giuseppe Bonarrigo

viii. Emanuel Dante Girotto;

and, as a consequence, his Honour failed to make the findings of material fact specified below.

4 Further to Ground 3(c) above, the trial judge erred in his evaluation of the evidence of Mr Puleo and each of the first and second respondents' witnesses by:

- a) failing to find that the involvement of Mr Puleo in representing the first and second respondents in contested litigation, and in the preparation of the evidence filed on behalf of the first and second respondents (in circumstances where it was correctly found by the trial judge that Mr Puleo should not have acted for the first and second respondents), materially compromised the reliability of the evidence given by each of the first and second respondents and their witnesses;
- b) holding that before the conduct of Mr Puleo could be a relevant factor in the assessment of the evidence of the first and second respondents and their witnesses, it was necessary for the appellant to show that Mr Puleo's conduct had "prejudiced the administration of justice" or "resulted in a miscarriage of justice".

5 Further to Ground 3 above, the errors in the trial judge's findings the subject of Grounds 1 and 2 above, were caused, or contributed to, by his Honour's wrongful rejection of evidence given by David Di Maria on the basis that it was unclear what period of time the evidence related to. [Tcpt, 10 November 2022, p 577(13)-578(27)]

6 Further to Ground 3 above, the errors in the trial judge's findings the subject of Grounds 1 and 2 above were caused, or contributed to, by his Honour's failure to draw an inference in accordance with *Jones v Dunkel* against the first and second respondents by reason of their failure to call evidence from Connie Di Maria (the deceased's full-time carer at the time the 2009 Will was made).

7 Further to Ground 3 above, or in the alternative, the trial judge denied procedural fairness to the appellant by reason of the extent, nature, and frequency of his interventions in the cross-examination of the evidence of the appellant and witnesses called by the appellant (in contrast to his interventions in the cross-examination of the first and second respondents and the witnesses called by the first and second respondents) thus:

- a) creating a real risk that the trial was unfair to the appellant; and
- b) affecting his Honour's ability to properly assess the relative weight of the evidence of all witnesses.

**Material facts**

8 Pursuant to rule 51.18(2) of the *Uniform Civil Procedure Rules 2005* (NSW), the appellant says the Court below should have found the following material facts:

- a) The deceased lacked testamentary capacity at the time she executed the 2009 Will.
- b) The deceased did not know and approve the contents of the 2009 Will.
- c) That, as at 18 September 2009, the deceased suffered from clinically significant cognitive impairment which compromised her mental capacity to make the 2009 Will and know and approve the contents of the 2009 Will.
- d) That the deceased experienced trouble signing her mark on pages 5, 6 and 7 of the 2009 Will.
- e) That the lack of consistency between the deceased's mark on each page of the 2009 Will and the quality of the deceased's mark on pages 5, 6 and 7 suggests a frailty of mind.
- f) The process by which the 2009 Will was created did not permit an inference to be drawn that the deceased had testamentary capacity or knew and approved the contents of the 2009 Will, including because:
  - i) Mr Puleo's did not conduct a proper assessment of the deceased's mental capacity;
  - ii) Mr Puleo did not conduct appropriate enquiries into the deceased's state of health at the time of making the 2009 Will; and
  - iii) Mr Puleo did not ask open-ended questions sufficient to assess the deceased's understanding of the 2009 Will.
- g) That the first and second respondents colluded when preparing their evidence.
- h) That the involvement of the first respondent's son, Shane Meduri, in preparing the first and second respondent's affidavits compromised the reliability of those affidavits.

- i) The first respondent's threat to Jake Meduri was intended by him to dissuade or deter Jake Meduri from giving evidence or truthful evidence.

9 Pursuant to rule 51.18(2) of the *Uniform Civil Procedure Rules 2005* (NSW), the appellant says the Court below should not have found the following material facts:

- a) That "[t]here were no contemporaneous records that could be used to determine whose account of events at various times was to be believed". [J 57]
- b) That there were only "two contemporaneous reports provided in 2014 and 2015" by Dr Mariam Joseph. [J 58, 839]
- c) That Mr Puleo met with the deceased to obtain her instructions for a Will on a separate occasion prior to the execution of the 2009 Will on 18 September 2009. [J 245, 394, 395, 396, 397, 401, 417, 418, 613, 882]
- d) That the deceased did not have any difficulty understanding Mr Puleo. [J 382, 386, 411, 580]
- e) That Mr Puleo discussed the extent of the deceased's estate with the deceased. [J 384, 394]
- f) That the deceased understood the terms and effect of Giuseppe's Will. [J 164; 168; 413, 904]
- g) That the deceased instructed Mr Puleo to draft a Will which reflected Giuseppe's Will with variations. [J 414, 415, 882, 908, 915, 929]
- h) That Mr Puleo was in a good position to assess the deceased's capacity "as she was not a complete stranger to him". [J 393]
- i) That the deceased was astute to the fact that she was inheriting her husband's property as well as succeeding to their jointly held property and therefore had an estate to dispose of upon her own death. [J 413]
- j) That the first respondent did not intend to dissuade or deter Jake Meduri from giving evidence in the proceedings by threatening him. [J 619, 621]
- k) That if the deceased's "florid symptoms" had been mentioned to Dr Romeo, or if he had observed them himself, they would have appeared in Dr Romeo's progress notes. [J 770, 798, 837]
- l) That the "florid examples" of the deceased's conduct prior to the making of the 2009 Will must not have occurred because they did not find their way into any of the deceased's contemporaneous medical records. [J 786, 798, 857]

- m) That Dr Romeo decided to refer the deceased to Dr Joseph in 2014 as he, by then, felt he was unable to assist the deceased on his own. [J 824]
- n) That the deceased understood "as at 2009, that Rose, Tony and Connie each owned a property of their own, and that Joseph did not own property". [J 882(5), 900, 929-930]
- o) That there were discussions between the deceased and Giuseppe about what would occur on their respective deaths. [J 162, 904]
- p) That the deceased had a long-held pattern of testamentary intentions. [J 909, 915, 926, 928]

#### ORDERS SOUGHT

- 1 Appeal allowed.
- 2 The Judgment of the Court below be set aside.
- 3 Letters of administration of the intestate estate of the late Elisabetta Meduri (also known as Elizabeth Meduri and Elizabeth Pelmisano Meduri) ("**the deceased**"), be granted to the third respondent.
- 4 The matter be remitted to the Senior Deputy Registrar in Probate to complete the grant.
- 5 The requirement for an administration bond and sureties be dispensed with.
- 6 The requirement for the third respondent to publish notice of his intention to apply for a grant of the estate of the deceased be dispensed with.
- 7 The third respondent shall be entitled:
  - a) to be paid from the estate of the deceased all usual and proper charges at the usual hourly rates as are charged by the legal practice in which he is engaged and on the usual terms as to payment of that practice:
    - i) for his work as administrator or trustee of the estate, or both;
    - ii) for the professional and non-professional services rendered by him or that legal practice in the administration of the estate of the deceased or of the trusts of the Will, or both;
  - b) to engage the services of any other legal practitioner, accountant or other professional adviser in relation to the administration of the estate where he considers it necessary to do so and to pay from the estate the costs incurred in having those services provided; and

- c) to be paid the legal costs and disbursements incurred in the sale of any real estate in which the estate of the deceased has an interest, to be charged against the proceeds of such sale.

- 8 The Statement of Claim be otherwise dismissed.
- 9 The Cross-Claim be dismissed.
- 10 The third respondent's costs, calculated on the indemnity basis, of the proceedings, be paid, or retained, as the case may be, out of the estate of the deceased.
- 11 The first and second respondents pay the appellant's costs in the Court of Appeal and in the Equity Division.

#### UCPR 51.22 CERTIFICATE

The right of appeal is not limited by a monetary sum.

#### SIGNATURE OF LEGAL REPRESENTATIVE


This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.

I have advised the Appellant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature

  
Solicitor on record

23 May 2023

#### Note:

1. This notice must be served personally unless non-personal service under UCPR 10.18 is permitted.
2. A copy of this notice must be filed in the court below in accordance with UCPR 51.42.

## NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the Appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

## HOW TO RESPOND

**Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.ucprforms.nsw.gov.au](http://www.ucprforms.nsw.gov.au) or at any NSW court registry.

## REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

## PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.



**FURTHER DETAILS ABOUT APPELLANT****Appellant**

Name Rose Marie Wild

Address

**Legal representative for Appellant**

Name Anthea Jane McIntyre

Practising certificate number



Firm McIntyre Legal Pty Ltd

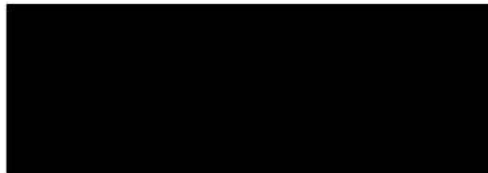
Address 1/744 Military Road

Mosman NSW 2088

Telephone

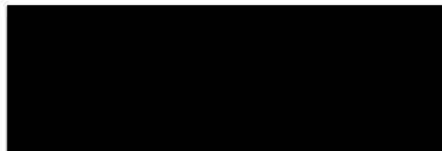
Email

Electronic service address

**DETAILS ABOUT RESPONDENTS****First respondent**

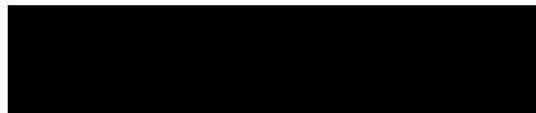
Name Dominic Meduri

Address

**Second respondent**

Name John Meduri

Address

**Third respondent**

Name Richard John Neal

Address c/o Teece Hodgson & Ward Solicitors  
Level 10, 1 Chifley Square  
Sydney NSW 2000

