

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



SWEANEY V BAILIE [2017] QDC 295

District Court of Queensland, Rosengren DCJ, 8 December 2017

Will maker left estate to charities and nothing to adult son and daughter, intervention of Attorney General on behalf of charities.

Key words: Bequest, Queensland, Family Provision, Costs, Claims by Adult Children, Costs of Litigation.

1. This was a case concerning an application for provision from the estate of the deceased, Mr Sweaney, by his adult son. The deceased had left his entire estate to be 'divided among any worthy charities' by his executor, the respondent to this application. However, he had an adult son and daughter who were not left anything in his will. In addition, in the six months between the making of the will and his death, the deceased gave \$150,000 to charity.
2. Mediation took place in April 2017, and a settlement was reached. However, the mediation took place without the notification or representation of the Attorney General in her capacity as protector of charities. After being informed of the settlement, the Attorney General's original position was that some of the estate should be given to charity to reflect the intention of the deceased, but this was later altered to not opposing the leaving of the entire residue of the estate to the adult son. Neither the deceased's ex-wife nor his daughter sought provision from the estate.
3. The evidence revealed the estate to be a modest one. In an affidavit filed on 10 November 2017, the respondent set out the assets and liabilities of the estate. These included a little over \$12,500 in a bank account, the balance of which was reduced to \$1,000 because of expenses and the respondent's legal costs and outlays; approximately \$212,000 from the proceeds of sale of the deceased's property at Laidley; a Toyota Camry with an estimated value of \$1,500; and a tractor.
4. The terms of settlement provided for the respondent to receive the tractor, Toyota Camry and \$10,000 in lieu of any other claim that he could make on the estate, including for executor's commission. The residue was to go to the applicant. There was no money to be given to charity.
5. Given the modest size of the estate, the costs of this case were a 'concerning aspect' (at [27]). Out of net assets of about \$213,000 costs were estimated to be \$136,759, or 64% of the estate. Even after some adjustment by

assessors, costs were put at \$122,759, or 58% of the estate. The court ordered that costs be capped for each party at \$45,000, for a total of \$90,000, leaving a residue of about \$123,000 to go to the adult son.

IMPLICATIONS



This case illustrates that leaving an entire estate to charity is not advisable if there are any possible applicants for family provision. Family provision laws apply in all States and Territories in Australia. In Queensland, section 41(1) of the Succession Act 1981 (Qld) provides:

If any person (the deceased person) dies whether testate or intestate and in terms of the will or as a result of the intestacy adequate provision is not made from the estate for the proper maintenance and support of the deceased person's spouse, child or dependant, the court may, in its discretion, on application by or on behalf of the said spouse, child or dependant, order that such provision as the court thinks fit shall be made out of the estate of the deceased person for such spouse, child or dependant.

In this case, the applicant son was judged to be eligible for provision even though he was 55 years of age and had only intermittent contact with his father over the 27 years before his father's death. The settled jurisprudence regarding moral obligation to provide for children (particularly children in need) was applied. The charities the deceased sought to benefit received nothing from the will.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QDC//2017/295.html>

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