

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.



Schmid Estate v. Schmid Estate, 2023 NSSC 70

Probate Court of Nova Scotia, Coughlan J, 28 February 2023

Whether the whole of the proceeds from a gift in a will should be directed to a charity.

Key words: Charity, Canada, Nova Scotia, Gift in Will, Competing Wills

1. The personal representative (the applicant) of the estate of George Henry Schmid (the deceased) applied for an order for the direction of the Court regarding the interest of the deceased in real property located in Nova Scotia, and the proper recipient or recipients of the net proceeds of the sale of the real property. The applicant did not take a position on the application.
2. The Dalhousie Medical Research Foundation (DMRF) was the beneficiary of the proceeds of the real property under the deceased's will. It submitted that it should receive 100 per cent of the net proceeds of the sale of the property in question.
3. There were two wills to be considered, that of the deceased, and that of his wife, Bernadette Marie Schmid, who had predeceased him.
4. The personal representative of the estate of Bernadette Marie Schmid objected to the position taken by DMRF. He submitted that both the deceased and his wife had an undivided one-half interest in the real property as tenants in common. Ms. Schmid in her will provided that Mr. Schmid should have exclusive use and occupation of the real property during his life, and at Mr. Schmid's death, that the proceeds of Ms Schmid's one-half interest should go to her seven children.
5. The Court first had to interpret Ms Schmid's will, which the Court said was poorly drafted. In the Court's view, her intention was that her interest as a tenant in common of any property subject to her marriage contract, was to form part of the residue of her estate (at [29]-[30]):

Bernadette Marie Schmid did not give her one-half interest in the Bayswater real property to Mr. Schmid's estate upon her death. The Bayswater real property is owned one half by the Estate of Bernadette Marie Schmid and one half by the Estate of George Henry Schmid. Fifty per cent of the net proceeds of the sale of the Bayswater real property are to be paid to the Estate of Bernadette Marie Schmid and 50 per cent to the Estate of George Henry Schmid to be dealt with in accordance with his will.

6. Therefore, DMRF was only entitled to one half of the proceeds of the real property i.e. the part to which the deceased had been entitled after his wife's death. The other half was to be disbursed in accordance with Ms Schmid's will to her seven children.

COMMENT



The Court noted that this was an example of a situation in which there appeared to be a conflict between an initial gift, in absolute terms, followed by words of limitation which seemed to cut down the extent of the original gift. In such a situation it is necessary to interpret the will-maker's (in this case Ms Schmid's) intention. Therefore, the Court considered the circumstances surrounding Ms. Schmid's life and all the things known to her at the time she made her will which might bear on the type of dispositions she actually intended to make by will. Because the will was professionally, though poorly drafted, the Court considered that her intention had been to ultimately benefit her children from a previous marriage with her share of the real property.

VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/ns/nssc/doc/2023/2023nssc70/2023nssc70.html>

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