A Will challenged resulted in legal costs exceeding the value of the estate

John Patrick Hay v Public Trustee of Queensland and Another [2014] QDC 107

The deceased (Mrs Gerhardt) passed away in 2010 and was survived by her three adult children of her first marriage and her husband (Mr Gerhardt). Mrs Gerhardt made a will with the Public Trustee of Queensland leaving her estate to her 70 year old husband.

Shortly after Mrs Gerhardt passed away, two of Mrs Gerhardt’s adult children from her first marriage filed separate applications in the District Court of Queensland seeking family provision from their late mother’s estate.

The Court was required to determine whether the applicant children had been left without adequate provision for their proper maintenance and support. The estate consisted of a modest home valued at $300,000 and a small amount of superannuation and life insurance proceeds. By the time the trial was heard the only asset remaining was the deceased’s house.

Whilst each of the applicant children were in modest circumstances, the Court found that the factors are that the estate was a small one and the duty to the spouse looms large. The Court found that the applicant children did not have a strong moral claim, whilst Mr Gerhardt did and the obligation of Mrs Gerhardt to make provision for her husband was a strong one. The applicant children also had the healthy advantage of youth whilst Mr Gerhardt did not.

The Court held that this was a case in which there were insufficient resources in the estate to meet all of the claims upon it and Mr Gerhardt’s claim upon the estate is so much stronger than either of the applicant children that his must prevail.
The Court found that the applicant children had incorrectly instituted separate applications. The applicant children’s costs up to the date of the hearing amounted to approximately $176,000. Mr Gerhardt’s legal costs incurred in resisting the applications were in excess of $130,000. The Official Solicitor to the Public Trustee of Queensland had incurred costs of approximately $48,500.

The Court noted that the total of the legal costs exceeded the value of the estate and found that in the absence of any other explanation the only motivation on the part of the applicant children in filing separate court applications was to increase the cost returns from the litigation.

Whilst the applicant children have been ordered to pay part of Mr Gerhardt’s costs of the proceedings, given the Court’s findings that the deceased’s duty was firstly to her husband - particularly in a small estate - it is difficult to understand the reasons why the applicant children chose to continue to embark on litigation and incur legal costs. Perhaps if the deceased had considered the risk of an application by her children, she may have taken further steps to protect her assets from attack.

If you would like to advice on estate planning, please contact our Wills & Estates specialist, Jarrad Mobbs.

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