

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

M.19/74

IN THE MATTER of the Guardianship  
Act 1968

AND

IN THE MATTER of  
a minor

BETWEEN ALAN STEWART of Palmerston  
North, University Vice  
Chancellor, as one of the  
executors of the estate of  
CECIL MONTAGUE ONGLEY late  
of Wellington, Medical  
Practitioner, deceased,  
and as testamentary  
guardian of

APPLICANT

AND

also known as

AVERY

DEFENDANT

Counsel B D Inglis Q.C. and R M Crotty for applicant  
G P Barton and W P Jeffries for defendant  
J W Gendall for child

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MEMORANDUM AS TO COSTS

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I have considered counsel's submissions in  
this matter.

Dr Avery seeks an order for costs from the  
estate of C M Ongley, deceased. Sir Alan Stewart as one  
of the executors of the estate and the testamentary guardian  
of seeks payment of his costs from the estate.

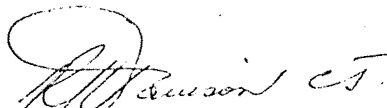
The nett estate of the deceased is estimated  
at \$50,982.36. In terms of the will, and one sister  
are entitled each to a two-seventh share and each of three  
other sisters to a one-seventh share. That means that the  
shares of and one sister amount to \$14,566 each and  
the shares of the other three sisters to \$7,283 each.

Sir Alan Stewart as an executor and guardian was perfectly justified in bringing these proceedings to determine the custody of                      In fact it was his duty to do so where                      was a ward of Court. It was necessary for the Court to decide on                      s future.

Dr Ongley in making his will must have realised that he was imposing on Sir Alan the likelihood of litigation involving                      and it is proper that Dr Ongley's estate should bear the reasonable costs of such litigation. Sir Alan is entitled to have his proper costs of the proceedings paid out of the estate. Counsel for Sir Alan has proposed costs which have been substantially reduced below those which would ordinarily have been charged and I fix those costs at solicitors' fees \$13,000; disbursements \$4,406.26 and counsel's fees \$6,500. The costs are a proper charge on the whole of the estate and shall be paid out of the balance before calculation of the shares of the five children.

Dr Avery has through her counsel indicated to the Court that her legal fees are anticipated to be approximately \$18,000. This is not a case, however, where it would be proper to order that Dr Ongley's estate pay her costs. She must pay her own.

Mr Gendall, who was appointed by the Court to represent the interests of the child                      is entitled to have his costs and disbursements paid out of money appropriated for the purpose by Parliament. I fix those costs at \$1,784 plus Dr Bridge's fee.



R K DAVISON

9 June 1982