

IN THE HIGH COURT OF NEW ZEALAND  
TIMARU REGISTRY

A.10/77

905

IN THE MATTER of the Family Protec-  
tion Act 1955 and its  
amendments

AND

IN THE MATTER of the Estate of  
P \_\_\_\_\_ LEGG of  
Ashburton, in the  
provincial district  
of Canterbury,  
Retired Farmer,  
Deceased

BETWEEN C \_\_\_\_\_ SCREEN of  
Picton, Married Woman

Plaintiff

A N D

P \_\_\_\_\_  
ROBINSON of Ashburton  
Solicitor and G \_\_\_\_\_  
KNIGHT of  
Ashburton, Chartered  
Accountant

Defendants

Hearing: 20 July 1984

Counsel: B. Petrie for Plaintiff  
M.W.S. Clark for grandchildren  
J. McGlashan for Trustees  
C.A. McVeigh for Residuary Beneficiaries

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ORAL JUDGMENT OF ROPER J.

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This is an application under the Family Protection Act 1955 by an adopted daughter, being the only child of the Testator, who died as long ago as 1973. By his last will dated the 18th January 1973 the Testator left his wife, who still survives, his personal chattels and a life interest in

residue with the remainder to the children of his sister who survive his wife's death. There are four such children, all living in England, and one can infer that they are all of mature years. It would seem from the only affidavit filed by one of them that if they had ever seen the testator at all it would have been when he was invalided to England following wounds in the last war. The only affidavit filed by the beneficiaries in England is in opposition to the claim and that opposition has been fully supported by Mr McVeigh's submissions at the present hearing.

The nett value of the estate is to the order of \$33,000 represented by a dwelling, some mortgage investments and a small amount of cash. Probate was granted to the Defendants on the 25th June 1973. The estate duty accounts had been filed by 20th July 1973 and duty paid later in that year. In 1974 the Defendants reported that administration of the estate was complete. The first notice the Defendants had of the Plaintiff's claim was a letter late in 1976 from the Plaintiff's solicitors. The Plaintiff's reason for the delay was that she had always believed that the whole estate would go to her mother and only commenced the proceedings when she found that not to be the case. The present proceedings were filed in February 1977 and leave to extend the time for filing was granted by Perry J. on 24th November 1977, although an affidavit had been filed by the Defendants confirming that administration was complete. There was perhaps no jurisdiction to make the order extending time but I cannot go behind that order at this stage.

The Plaintiff is now        and it seems that she lived with her parents until she was married in about        at the age of        The only reason the Plaintiff can give for being excluded from the will is that her parents took an instant dislike to her husband and she became pregnant before the marriage. That seemed to be a circumstance that the testator just could not accept. Perhaps the widow could have thrown

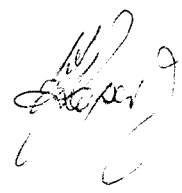


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widow the trustees stand possessed as to one half of residue for the two older grandchildren, with the remaining half to the Plaintiff on terms that she assign one half thereof to the youngest grandchild Lee, who cannot otherwise be provided for.

I require a draft order from counsel to give effect to that direction.

As for costs, there is a difficulty because there is very little cash in the estate and any substantial awards will affect the interest of the life tenant. The Plaintiff is legally aided and there will be no order for costs in respect of her. I reserve the question of costs so far as Mr Clark for the grandchildren is concerned, it being his intention to apply for legal aid. Mr McVeigh for the English residuary beneficiaries is awarded costs of \$400 and disbursements, if any, to be paid from the estate. Disbursements are to include reasonable travelling expenses.

Handwritten signature and initials, possibly "M. J. McVeigh" or similar, in cursive script.

Solicitors:

Petrie Mayman Timpany & More, Timaru, for Plaintiff  
Robinson Robinson & Gregg, Ashburton, for Defendants