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IN THE HIGH COURT OF NEW ZEALAND A NO 58/82

NAPIER REGISTRY

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IN THE MATTER of the Family Protection Act, 1955

AND

IN THE MATTER of the Estate of J OLSON late of Napier, Retired, Deceased

BETWEEN A BATT of Napier, Married Woman

Plaintiff

AND THE PUBLIC TRUSTEE OF NEW ZEALAND as Executor of the Will of the abovenamed deceased

Defendant

Hearing: 6 June 1984

Counsel: M B Wigley for Plaintiff
L H Chisholm for Grandchildren
Mrs M Lyndon for Defendant

Judgment: 8 June, 1984.

JUDGMENT OF JEFFRIES J

This is an application pursuant to the Family Protection Act 1955 by a daughter, A Batt, against the estate of her late father, J Olson, who died on the 1982 leaving a will dated 10 August 1977 which named the Public Trustee as executor leaving his estate to his mother with a gift over to a charity. Further details are given hereafter. The deceased was married once only to plaintiff's mother and plaintiff was the only issue of that marriage having been born on the 1947. The deceased and his wife separated and their marriage was ultimately dissolved by

decree absolute, probably in 1974. The former wife has since remarried.

The family apparently had always lived at Napier. The deceased worked for the New Zealand Railways but in 1978 he was dismissed no doubt for reasons which are about to be described. Plaintiff said in her affidavit in support the deceased had been an excessive drinker for as long as she could remember. She gave some details of his argumentative and violent behaviour when the family lived together as a group. The plaintiff herself lived at home with her parents until her marriage in 1967. I offer no detailed account of the relationship between plaintiff and her father after she left home other than to say the uncontradicted evidence is that she was a faithful and dutiful daughter to her father in spite of his excessive drinking and erratic, bizarre behaviour towards his former wife. From her evidence, and that of a letter produced to the court written by the Director of Hawkes Bay Addiction Centre to the Traffic Department of the Napier City Council, and dated 6 June 1978, the court is satisfied that he was by this stage a confirmed alcoholic whose past consumption had permanently damaged his brain.

The dates of important events about to be described are of relevance to this application. On 10 August 1977 the deceased executed the will prepared by the Public Trust Office in Napier naming the Public Trustee as executor and leaving three legacies, respectively, to his daughter, the plaintiff, and her two children, and the balance of his estate to his mother who was then alive with a gift over to a charity referred to hereafter. As to be expected the officer of the Public Trust explained to the testator his obligations under the Family Protection Act but he excused further provision for his daughter by saying she had not

"offered to assist with any chores at home". For reasons already given, and because of an event about to be mentioned, I am satisfied that this was not a correct assessment of what his daughter was doing for him.

In 1978 the deceased received the sum of $12,254.35 being his share of a matrimonial property settlement. He went with his daughter and deposited that sum at the Post Office Savings Bank in their joint names having had explained to him that should either die the survivor took all. I think this is strong evidence that he meant to leave his entire estate to his daughter.

The deceased's mother pre-deceased him in June 1979 leaving substantial assets which have probably now reached the net value of about $180,000. For reasons connected with the deceased's excessive drinking at the time his daughter and her husband chose not to inform him of the death of his mother and they alone represented the family at the funeral. Basically they feared that if he travelled to Waipukurau where the funeral was to take place he might take the opportunity of going on a drinking binge. I am unconvinced that was a wise decision but nevertheless it is evidence of the severe alcoholism from which the deceased suffered at that time. I am also satisfied the statements contained in the affidavit of the plaintiff that he never really understood the effect on his assets and testamentary obligations consequent on his mother's death are correct.

The ultimate residuary beneficiary, the Hawkes Bay and East Coast Centre of the St John Ambulance Association Inc. was duly served with a copy of the proceedings brought by the plaintiff but has chosen not to enter an appearance.

Mr Wigley, who acts for the plaintiff, enquired as recently as 31 May 1984 at the office of the Association in Napier of its attitude. He was informed that the Assocation wished to abide the decision of the court and I accepted such assurance but reserved the decision until written confirmation of that had been supplied to the court, which is now available.

Mr L.H. Chisholm was instructed to act on behalf of plaintiff's two children, now aged years respectively. Mr Chisholm filed a memorandum to the effect that he had discharged his duties of investigating the needs and requirements of the grandchildren and had reached the conclusion because they are basically healthy children living in a stable home environment it was not necessary to advance a separate claim. The court accepts that as being the correct view.

The application is that of an only daughter in regard to the estate of her late father to whom she had been a good daughter throughout his life. The competing claimant, if it could even be put in those words, is a charity which understandably adopts an entirely neutral stance. In such circumstances the court has little difficulty in deciding the proper order is that the net estate of the deceased be paid to the plaintiff.

I make an award of $500 costs to cover Mr Chisholm's representation of the grandchildren.

Solicitors for Plaintiff:	Langley Twigg & Co.
Solicitors for Grandchildren:	Willis Toomey Robinson & Co.
Solicitors for Defendant:	District Solicitor, Public Trust Office, Napier