

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

448

IN THE MATTER of the Family Protection
Act 1955

AND

IN THE MATTER of the will of AUDREY CAREN
CRADOCK late of Rangiora,
Married Woman Deceased

BETWEEN JEFFREY CONRAD CRADOCK of
Rangiora, Widower

Plaintiff

AND

MURRAY GORDON LOUIS
LOUGHNAN of Christchurch,
Solicitor and GEOFFREY
ROBERT GORDON MILLAR of
Rangiora, Farm Hand as
executors and trustees
of the estate of the said
Audrey Caren Cradock
Deceased

Defendants

Hearing: 21 March 1984

Counsel: A.P.C. Tipping for Plaintiff
M.G.L. Loughnan for Defendants
A.J. Forbes for Elizabeth Mary Cradock
and (by appointment of Court) for
Patricia Anne Cradock and Jeffrey Peter
Cradock
S.L. Kaminski for R.J. Cradock

Judgment: 21 March 1984

DW MEM

ORAL JUDGMENT OF EICHELBAUM J

I deal first with the plaintiff's claim. That has been put before me on the basis of a proposed order which is supported by all the parties. In particular it

has the support of Mr Forbes who was appointed as counsel on behalf of two of the children. One of these is still a minor and Mr Forbes very properly informed me that because of the circumstances which he explained, he had not been able to obtain the views of Peter, the child in question who is now aged 17. Nevertheless, Mr Forbes said that he could confidently support the terms of the proposed order and that he was confirmed in this course by the fact that the two older children both supported the making of further provision in favour of their father in the terms proposed.

Having read the papers and heard what counsel have to say I am satisfied that an order on the basis suggested is proper and I will make an order in terms of the draft submitted subject to amendment of paragraph 2 to read as follows :

" That the defendants shall pay to the plaintiff forthwith the sum of \$12,000 in respect of arrears of income, the defendants undertaking they have paid such tax on that sum as is payable in respect thereof as trustees' income. "

I turn to the claim by Robert John Cradock, one of the children of the deceased now aged 24. In terms of the will he has received a one fourth share in the residue but vesting has been postponed until age 40. On his behalf it has been submitted that further provision should be made for him by providing that vesting

should take place now, or at any rate at an earlier age than is stated in the will.

On the face of it vesting has been postponed for an unusually long period. On the other hand, in the will which the testatrix made only a few weeks before her death, she went to a great deal of trouble to differentiate between her children and to do what no doubt she thought was proper and best for them. The evidence that is available in regard to the family as a whole certainly explains the concern that the testatrix must have felt as to what might occur if individual children received the substantial sums of money that are available for distribution, not only through the testatrix's own estate, but also through other family estates and arrangements. The information that has been placed before me that bears on the issue so far as Robert is concerned is relatively slight and I certainly do not feel any confidence that I am in a better position to make a judgment in regard to how he might treat the situation if a large sum of money comes into his hands shortly, than was his mother. Such information as is available certainly lends support to the view that he has some spendthrift tendencies. Further, and as a matter of principle perhaps I should have put this first, there is no convincing evidence that he is in a position of need in any real sense. He has purchased a modest property, the debts that he has incurred while waiting for these proceedings to be disposed of have been discharged, and he is left with some \$40,000 available. I appreciate the point that if vesting does not proceed until the time stipulated in the will he may be deprived of capital assistance in the years when his family needs it most, but balanced against that has to be the risk that if the capital is made

available it will not be spent wisely.

Bearing in mind that the onus lies on the applicant, I am not satisfied that it has been discharged and I decline to make any order in his favour. Rather than dismiss the application in a final way however I will reserve leave to Robert to apply further. That will leave the way open to him to apply again if his circumstances change; and no doubt he might be encouraged to do that if events over a period of years demonstrate that the reasons that the testatrix evidently felt existed and which I must say I can sympathise with should have disappeared. However for the reasons stated I decline to make any other order in Robert's favour on the present application.

[Handwritten signature]

Solicitors :

Wynn Williams & Co (Christchurch) for Plaintiff
Loughnan Jarman & Co (Christchurch) for Defendants
Duncan Cotterill & Co (Christchurch) for Elizabeth Mary
Cradock and (by appointment of Court) for Patricia
Anne Cradock and Jeffrey Peter Cradock
Wood Hall & Co (Christchurch) for R.J. Cradock