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IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

3 PNT

No. A.59/83

1368

IN THE MATTER of the Family Protection Act 1955

A N D

IN THE MATTER of the estate of R ANDERSON of Invercargill, Meat Inspector, Deceased

BETWEEN A ANDERSON

Plaintiff

A N D B ANDERSON

Defendant

Hearing: 7 November 1984

Counsel: J.J.D. Strettel for Plaintiff
W.P. Goldsmith for Trustee
B.A. Boivin for Children

Judgment: 7 November 1984

ORAL JUDGMENT OF HOLLAND, J.

The plaintiff, A Anderson, seeks further provision under the Family Protection Act in the estate of her late husband. There was also before the Court a claim under the Matrimonial Property Act but that has been abandoned.

The deceased was a meat inspector who died on , leaving him surviving his wife, the plaintiff, and two children now aged . The deceased was married only once. He is survived by his father, but there is no evidence that his father was in any way dependent on him or receiving financial support from him. The sole claimants on the defendant's bounty were accordingly his

widow and his two infant children. He left a relatively modest estate. It comprised a house property valued at just over $35,000 subject to two mortgages totalling nearly $26,000. In addition he had life insurance of just over $24,000 and accrued wages of $1,400. The house property was jointly owned by the widow and the deceased and there was fortunately a mortgage repayment life insurance in respect of the first mortgage. Accordingly the wife received the house property subject only to the second mortgage of some $7,000.

The will of the deceased provided for a legacy of $2,000 to his widow, an annuity of $1,500 and the residue to his children. The will was drawn in 1969, only a year after the marriage of the plaintiff and the deceased. At that stage the deceased was a farmer and the will contemplated the estate carrying on the farm providing the widow with an interest in the house property on the farm free of any outgoings. The farming venture was not a financially successful one and was ultimately sold leaving a nett surplus of $3,000. The will of the testator was not changed after the deceased ceased to be a farmer and worked for a salary. Sadly, although the deceased had a serious illness from which he died at a premature age, he still did not change his will.

I am not left in the slightest doubt that in the circumstances existing at the date of his death he failed to make adequate provision for his widow. It appears that the widow had no assets of her own of any substance other than a small and old motor car. She has received the legacy of $2,000, a life insurance policy which she had on her husband's life for $6,500 and a widow's benefit payment

made by her employer of $4,000, in addition to the house property subject to the mortgage which devolved upon her upon her husband's death. She has subsequently sold that house property and has now moved to Oamaru which is her home town where she has a property which she purchased for $65,000 subject to a mortgage of $11,000. She has replaced her car, and although she does not depose as to the car which she purchased or its value she says that this took most of the money received from her insurance policy. It accordingly is not a motor vehicle of any extraordinary value in these inflated times. She how has a house property subject to a mortgage of $11,000, an overdraft at the bank of some $200, a Bank card debt of approximately $500 with interest accruing due on the mortgage next week of $605. There is no suggestion that she has not been otherwise than a good mother to her children and a good wife to her husband. There is no suggestion that she has any degree of irresponsibility over money and it is quite apparent that she has acted well in the interests of her children.

Mr Boivin, appointed as counsel to represent her children, has felt it necessary to submit that the estate should be preserved for the children and that any needs in their regard could be met by an application under the Trustee Act for an advancement to the children. There is also provision in the will for the trustee to supplement the annuity. Those provisions, in my view, are quite inadequate in the case here of a responsible mother and well deserving widow. It is in the interests of these two children that their mother have whatever financial security her husband could have given her so that they will not at this important stage of their life when they are at secondary school be

deprived of whatever might be able to be made available to them by way of their needs in respect of education and maintenance during that period. The estate was a modest one. In the circumstances existing I am quite satisfied that it was the duty of the testator to leave his entire estate to his widow, trusting her to see that her children were properly maintained. The question of any inheritance of the children is of much less importance than their immediate upbringing, but any asset that she has acquired from her husband's estate and which remains hers during her life may well ultimately go to the children.

There will accordingly be an order varying the terms of the will, providing that the entire estate is to go to the widow. There is no need in those circumstances to make a provision for the plaintiff's costs. The defendant's costs as trustees will also come out of the estate without an order. Mr Boivin's costs must, however, be paid from the estate. The order sought is $250 and I am happy to make an order that the costs of Mr Boivin be fixed at $250 together with disbursements and other necessary payments to be fixed by the Registrar and to be paid from the estate.

The proceedings brought under the Matrimonial Property Act are dismissed.