

X

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

A.658/81

1242  
47

IN THE MATTER of the Family Protection  
Act 1955

AND

IN THE MATTER of an application for  
further provision under  
that Act

BETWEEN

IRIS MAY BUCHANAN of  
Fielding, Widow and  
MARION JOY CAMERON and  
JUDITH ANN FRITH both of  
Palmerston North, Married  
Women

Plaintiffs

AND

DAVID BERESFORD BUCHANAN  
of Mangaweka, Farmer and  
MARGARET ANN GLOVER of  
Palmerston North, Married  
Woman as executors and  
trustees of the estate  
of GEOFFREY BUCHANAN late  
of Orewa Retired, deceased

Defendants

Hearing: 9th February, 1984

Counsel: Williams and Key for Plaintiffs  
Holmes for Trustees  
Moody for three Churches and three charities  
Learmont for D. W. Hoeta, A.I.S. Reade and  
C.A. Coombes

---

ORAL JUDGMENT OF SINCLAIR, J.

---

This is a claim under the provisions of the Family Protection Act 1955 and is really not contested in any shape or form.

Mr Buchanan died on 28th November, 1979 in the crash on Mt Erebus, he having married his widow on 11th November, 1944. The marriage subsisted for over 30 years and there

are two adult daughters, both of whom are married but whose circumstances can be described as quite modest. It is an unfortunate fact that this testator during the latter period of his life suffered from a mental illness which eventually resulted in his turning against his family, that being the family who over the years had worked well in the interests of the family as a whole and in his interests for quite a number of years after he became debilitated as a result of a heart condition. As is so often the case in circumstances such as these the one who receives most of the care and attention from the family is the one who eventually turns on those who provide that care and attention. This, on the papers, is what has happened to a certain degree in Mr Buchanan's case. It is probably unfortunate that he did not keep on with the medical treatment which he had been having in Palmerston North for quite a period. If he had, the unfortunate situation with which the Court is now faced may never have occurred. Suffice it to say that I feel there is ample evidence as to his mental condition in the form of letters which he wrote after he left home and also at the time he left.

There is no necessity for me to traverse the affidavits in depth, but the widow's affidavit shows quite clearly that when the marriage took place the parties were in modest circumstances and that by working together a fairly viable farming proposition was established. As time went on and Mr Buchanan could not manage, Mrs Buchanan herself to a large degree, and with the assistance of the two daughters to a lesser degree, carried on the farming operation for quite

a considerable time. Eventually the farm had to be disposed of in the interests of Mrs Buchanan because her health was beginning to fail and it seems that that act brought about a decided change in Mr Buchanan's attitude towards his wife and family.

Under the last will that had been made by his solicitor who looked after his affairs for a good number of years, the estate was left in its entirety in trust for the wife for life and then with gift over to the two daughters. That reflected, to my mind, the moral duty which the testator owed throughout his life to his family. But after the estrangement occurred he shifted to Orewa and he made a will which was entirely different from the scheme of wills which he had made over the earlier years. The final will provided for some gifts to persons who had given him probably some care and assistance when he was at Orewa, but that was over a short period and he made provision for some gifts to the children of each of the trustees. There are five such children and to my mind they are in a somewhat different position from the other beneficiaries who first had their contact with the deceased at Orewa. Mr Buchanan is a nephew of the deceased and Mrs Glover is a niece. Both were god-children of the deceased and had there been bequests to them in their situation as god-children, depending upon the amount of them the Court might have had difficulty in saying that those were not proper gifts to make in all the circumstances. But the gifts have been made to the children of the executors who are somewhat more remote from the deceased than their parents and while it was submitted that the gifts could

be overlooked altogether I am of the view that they should be retained, but to a lesser degree than is contained in the will.

So far as the churches are concerned, in view of the affidavit filed on behalf of two of the churches I am of the view that all three should cease to have any benefit under this will and that the Plaintiffs themselves, bearing in mind what is contained in the will, can decide for themselves whether they wish to make some contribution to any of these churches in memory of the deceased.

With the exception of Cherie Alison Coombes I am of the view that there is no room in the scheme of things for the stranger beneficiaries to receive any benefit under this will. The girl Coombes has received a radiogram and while at first sight it may seem, as a matter of consistency, that that gift also ought to be revoked by the Court, there seems little purpose in so doing. The value of the radiogram is minimal; the young girl has it at the moment and the expense that would be involved in retrieving it and disposing of it would not be worthwhile.

So far as the three residuary charities are concerned, it is difficult for the Court to ascertain whether or not there was any association between the deceased and any of those charities at all. There may well have been none, but there may have been the peripheral association which so often occurs when a person approves of the good works done by certain of the charities in New Zealand and these are three charities which are renowned for the good work which they do. Mr Moody, on behalf of the charities, does not

make any claim in the estate at all, but asks whether some small amount could not be left to them. I think that the estate is large enough to allow that.

I am satisfied that there has been a breach of moral duty and, indeed, there was no real contest on that factor. Once that is accepted then the Court has grave difficulty in upholding any gifts at all to strangers, particularly where the assistance has been of a transitory nature.

Bringing the best of all that has occurred together, and trying to be fair and just, it seems to me that what ought to happen is this: that the bequests to the children of David Beresford Buchanan and Margaret Ann Glover should be reduced from \$1,000 to \$500. To each of the residuary legatees, that is the three named charities, there should be awarded the sum of \$1,500. Out of the balance of the estate the Trustees' costs will be paid as between solicitor and client and the costs of Mr Moodie shall also be paid and these are fixed at \$1,000 plus any necessary disbursements. Mr Edwards who was appointed to represent one infant child and two of the beneficiaries has had quite a difficult task and his costs ought to be paid out of the estate. They are fixed at \$800 and any necessary disbursements. The balance of the estate is to go to the three Plaintiffs in equal shares and in those circumstances there is no necessity for this Court to make any order as to their costs.

P. B. King.

SOLICITORS:

Taylor, McIntosh & Key, Fielding for Plaintiffs

Dickson & Co., Auckland for D. W. Hoeta, A.I.S. Reade  
and C.A. Coombes

Turner Hopkins, Takapuna for Trustees

Mallow Moody & Greville, Auckland for three churches  
and three charities