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MEDIUM PRIORITY

IN THE HIGH COURT OF NEW ZEALAND
NAPIER REGISTRY

A. 43/83

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IN THE MATTER of the Family Protection Act 1955

AND

IN THE MATTER of the Estate of AMY MARION CORDERY of Napier, Widow (Deceased)

BETWEEN: LEONIE MARGARET GROVE of Weranui Road, R.D. 3, Kaukapakapa, Married Woman and JEFFERY FRANCIS CORDERY of Auckland, Engineer

Plaintiffs

A N D: THE PUBLIC TRUSTEE at Napier as Executor and Trustee of the Will of the said AMY MARION CORDERY Deceased

Defendant

Hearing: 19 June 1986

Counsel: G.V. Hubble for Plaintiffs
R.A. Lamont for Residuary Beneficiaries
K.J.J. Healey for Defendant

Judgment: 16th September 1986

JUDGMENT OF JEFFRIES J.

This is an application under the Family Protection Act 1955 by a brother and sister for further provision from the estate of their mother, Amy Marion Cordery, who died at Napier on 20 April 1983, aged 80 years, leaving a Will dated 20 May 1982 naming the Public Trustee at Napier executor of the Will. The deceased's husband, Daniel Jeffery Cordery, had died in 1974 in circumstances which will be briefly described. The estate is not large comprising a house at Taradale as its only substantial asset. As will be revealed the way in which this house was used since its purchase in 1959 presents a particularly knotty problem in the application before the court.

The exact date of the marriage of the deceased and her husband is not before the court, but it probably would have been somewhere after the middle 1920's. It was a Christchurch family and whilst there three children were born, namely Leonie Margaret Grove, now aged 54 (plaintiff); Jeffery Francis Cordery, now aged 52 (plaintiff) and Marion Patricia Conayne, now aged 58. The early life of the family was considered by all to have been a close one with normal relationships. It is perhaps appropriate to mention here the only reservation expressed by Mrs Grove about her upbringing is that her mother had extreme religious attachments to the Catholic Church which caused difficulties later in life when Mrs Grove's first marriage was dissolved and she remarried. These sentiments were also shared by her brother Jeffery. In the 1950's both plaintiffs left home, married and settled in the Hawke's Bay district. In 1955 Mrs Conayne married to Jacob Arnold Conayne, now aged 59 years. An important aspect of this case is that eight months after their marriage, at the request of the senior Corderys, they moved into their house in Christchurch as

company for them. Whilst Mrs Conayne was in the Hawke's Bay district assisting her sister Leonie who was having a child, the Corderys decided to relocate in the district and purchased a house at 52 Waterhouse Street, Taradale, at the end of 1959. The Conaynes moved with the Corderys and lived with them throughout their respective lives, and to this day still live in the house. In that time the Conaynes raised six children. When purchased the property was placed in the sole name of the deceased and became the principal asset in her estate when she died. The house was about 80 years old when purchased for $5,700. It was big and apparently in poor condition.

At the beginning the house was occupied as one household but gradually Mr and Mrs Cordery occupied a separate area, although it was not entirely self-contained. Life was apparently shared together as an extended family. The physical care of the dwelling and grounds fell to Mr Jacob Conayne who also carried out maintenance and renovation. Extensive details were given in their affidavit and they are not contradicted. The court is satisfied considerable money was spent by the Conaynes on the dwelling, but they paid no rent as such. They accepted liability for interest on a small mortgage and other expenses were shared. The Conaynes ultimately repaid the mortgage of $3,600.

It seems Mr Cordery's health, mental and physical, began to deteriorate about 1970, and he died in 1973. The last 3-4 years of his life would have been particularly trying. Mrs Cordery stayed with Leonie in Auckland for eight months whilst her husband was in an Old People's Home there for the last period of his life. Mrs Cordery continued to live with the Conaynes for the final 10 years of her life in which, as might be expected, the obligation of caring more directly for her increased.

In the 28 years the Conaynes lived with one or both of the Corderys they had raised six children of their own, the youngest of whom is now aged about 17 years. Mr Conayne is employed as a clerk and earns $16,500 gross, yielding him a take home pay of $231.16 per week. His wife works as a shop assistant earning $90 clear per week. Their daughter Stephanie, aged 27, and her husband live in a flat on the property rent free. They have total assets of about $13,000. They may have had accommodation on very generous terms, but their assets are modest. There is no suggestion at all of frivolous spending, or spending other than on family and ordinary living.

Mrs Grove's life must be mentioned in a little detail. She married an accountant, Stuart Burnette Scheib, in 1952 and it ended in divorce in 1976. There were four children of that marriage, all of whom are adult and independent. In 1977 Mrs Grove married her present husband who at the time was a Ferry Master, but had been a Minister of Religion. There could be no question but that the break up of her first marriage and subsequent remarriage caused to her mother the most profound affront on religious grounds. Many letters of her mother's were produced to the court and by their terms they confirm and support the aforesaid observations. Her brother Jeffery, who is also a plaintiff, said difficulties arose between his mother and him because he refused to interfere in his sister's matrimonial arrangements. Mrs Grove and her husband own a property which she valued at $55,000 in 1983 when it had a mortgage of $10,000 on it. Furniture was not valued but vehicles were at $8,500. Her husband in 1983 was employed earning $16,000, but her last affidavit filed after the date of hearing is that he has retired on health grounds and they have purchased a general store yielding about $9,000 per annum to them. There is no evidence of the cost of purchase or how it was financed.

The other plaintiff, Jeffery, is an engineer and lives in Auckland. He joins his sister in criticism of his mother's religious zeal throughout her life. He is married with three children, the youngest of whom is now aged about 17 years. He owns his own home valued in 1983 at approximately $42,000 with a mortgage of $4,000. His income then was $16,000 per annum. His wife works part-time. He owns two oldish cars and boat trailer valued at $8,000.

It seems both plaintiffs have net assets at least around the $50,000 mark, and the Conaynes much less than half that amount excluding, of course, the provisions in the Will to which I now turn. Both plaintiffs now live in the Auckland area.

The Will of the deceased was made 11 months before her death. She provided a legacy to Leonie and Jeffery of $3,000 and a crystal necklace and earrings to Jeffery's wife. She left the remainder of her estate to her daughter Marion as to two-thirds, and one-third to her daughter's husband Jacob. The furniture is valued at $2,750 and there is virtually no other asset other than the house valued at $48,000 by government valuation in 1982. An August 1985 valuation of the property was placed before the court giving a total value at $76,000. It seems the land could be subdivided and if this were done the property would probably yield a net figure materially in excess of $76,000.

The affidavits contain some guarded assertions of unfilial behaviour on the part of the plaintiffs with subsequent denials. The approach of the court is that Leonie and Jeffery were throughout loyal and loving daughter and son,

respectively, accepting the undisputed fact that they both from early adulthood lived their lives independently of their parents. The actual independence seems to have been normal, but to an extent may have appeared more-so in view of the close intertwining of the lives of their parents with that of the other daughter Marion and her family.

It cannot be denied that the circumstance whereby a daughter and her husband voluntarily chose to live with her parents in their dwelling almost from the beginning of their married life to the end of the lives of the parents, is most unusual. Especially when the second generation produced and brought up no less than six children. All the evidence available to the court, including the terms of the Will of the testatrix, indicates it was successful. The capacity for toleration and understanding must have been high for all participants in this arrangement. If one put aside the statutory obligations fixed upon a testatrix the Will of the deceased is entirely understandable in terms of human relationships. The Conayne family was for the Corderys after middle age through to the end of their respective lives a very special relationship. It must have been perfectly clear to both Corderys that the arrangement could only have worked if the stranger in blood, namely Marion's husband, agreed, and this he did unselfishly and willingly. It is true that the arrangement had its financial advantages for the Conaynes but in the terms of ordinary human conduct it could hardly be done for that alone. What financial advantage the Conaynes gained would, in my view, be off-set by the other factors which need not be explored in detail. It was an arrangement that suited both sides, but it created a degree of substantial reliance for the Corderys on the Conaynes, and vice-versus. Such an extraordinary relationship between the parents and one of their three children presents difficulties for a court in an application under the Act for further provisions by the other two.

The court cannot substitute its judgment based on some pattern of justice which appeals to it as fair, but must instead apply the statutory directions as worked out and applied in the case law. The court must ask itself the primary question: by her Will was the testatrix in breach of her moral duty to provide adequate maintenance and support for the plaintiffs? I think by making a small bequest to each of two children and to leave to her son-in-law to whom she owes no statutory duty almost one third of her estate, and the other two thirds to his wife, her other daughter, is to place herself in breach. Having said that I do not regard the breach as a flagrant one for many of the reasons already stated in this judgment. I might add that the notes and memoranda attached to an affidavit filed after the hearing by the Public Trustee at my request on another matter, indicates that the testatrix was fiercely defensive of the provisions of her Will after having the full effect of the Family Protection Act explained to her. It is clear she would not approve of this judgment.

There was no unfilial behaviour on the part of either plaintiff but there was an extraordinary contribution by Marion and her husband to the parents which cannot be explained away by financial advantages to the Conaynes. The material position of the Conaynes at a markedly inferior level to the plaintiffs testifies to that. Moreover, I think the plaintiffs have overlooked the lost opportunity of acquiring their own home which inevitably resulted from the decision of the Conaynes to remain with the Corderys. The repair must be to the extent of the breach, and the court's view is that if the legacies are each increased by $7,000, making a total of $10,000 to each plaintiff, they receive a proper share. The incidence of that

order is to fall on the share of Jacob Conayne which markedly reduces his benefit, but to him there is owed no statutory duty. In all other respects the Will is to remain as executed.

The costs of the parties are to be paid out of the estate and counsel may submit a memorandum after consultation.

Solicitors for Plaintiffs:	Holmden Horrocks & Co., Auckland
Solicitors for Residuary Beneficiaries:	Dowling & Co., Napier
Solicitors for Defendant:	Public Trustee, Napier