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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

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No.A.276/85

IN THE MATTER of the Family Protection Act 1955

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A N D

IN THE MATTER of the estate of CONSTANCE EMILY COUMBE

BETWEEN MARGARET MARY COUMBE

Plaintiff

A N D THE PUBLIC TRUSTEE

Defendant

Hearing: 17 March 1986

Counsel: E.J. Tait for Plaintiff
D.J. O'Rourke for Defendant
K.J. Searle for Charity

Judgment: 17 MAR 1986

JUDGMENT OF HARDIE BOYS J

This is a claim under the Family Protection Act by the 46 year old unmarried adopted daughter of (and the only possible claimant under the Act) Mrs Constance Emily Coumbe, who died on 25 April 1985 aged 83. The plaintiff had lived with her parents all her life and after her father died in 1960 she continued living with her mother. She worked as a nurse until about 1972 but then she suffered a breakdown and has since done some part-time work but has really been incapable of anything more than that. It may be that once this case is out of the way she will be in a better condition to cope, but she has been

badly depressed over the years as the result of family circumstances I suspect and the matter has to be approached on the basis that because of the way in which she lived at home and devoted herself to her mother's care and because of her health, she really has very little of her own. She has some personal effects and a motorbike on which she owes some $2,000 and that is all she has. She has no home of her own because her mother sold the family home over her head and left her daughter to go and board where she could find board. The old lady was able to manage about her own home until about 1980 and then she really could not look after herself and finally she went into the Mary Potter hospital and her daughter devoted herself to looking after her in the home and to visiting her in the hospital. It is clear that she is one of these daughters who has been dominated by a strong willed mother, who has never had a life of her own, who has been treated like a child-servant, even as she matured in age, and in fact I think her condition is summed up by her Doctor, who says that if she had left home in her early twenties and refused her mother's demands then she would have been a very different, much happier and healthier person. The deceased, however, regarded this devoted daughter with some vitriol and suspicion and gave the Public Trustee her views about her suitability to receive money from her estate, blaming her daughter for the fact that she had to be admitted to hospital.

Her will really reflects these attitudes. It was made in July 1984. It left some pecuniary bequests and gave the daughter a life interest in the estate which, if not by then soon after, did not consist of a home but consisted only of

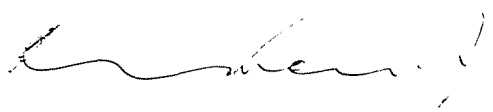
money in the Bank, and left the remainder to the Catholic Bishop of Christchurch for the purposes of the relief of poverty; forgetting I suspect that charity begins at home

The estate consists now of assets of approximately $80,000 net most of it being the proceeds of sale of the house and most of it having been derived from the plaintiff's father's estate, although the plaintiff herself has made considerable contributions, financially, as well as in other ways, to the building up of the deceased's estate, having put some money into the most recent of the family homes and having bought a considerable number of items of furniture, some of which the decased gave away to charities.

This is one of those cases where a breach of duty is abundantly clear and has not really been contested. None of the beneficiaries has chosen to take part in the proceedings although Mr Searle on behalf of the Parish Priest of St. Peters at Beckenham has appeared out of courtesy and indicated that the Parish abides the Court's decision. I do not think there is any need for me to elaborate on reasons. This is clearly a case where there was a gross breach of duty, where the plaintiff the only claimant has a strong case for capital provision, particularly in view of her precarious state of emotional health and her parlous financial circumstances. She ought to have a home of her own.

I am asked to make an order that would effectively give her almost all the estate. By and large I am prepared to accede to that but I do think that the Court's duty in these matters is not to entirely overrule the deceased's wishes but to give some effect if possible, I think it is possible here, to the charitable purposes and the other intentions the deceased had.

There was a gift to the St. Peters Parish for masses to be said for the family but I think that must be regarded as a gift for the general charitable purposes of the Church. Obviously the Church took a high priority in the deceased's mind and I think that the estate really is large enough to enable that gift to remain; and similarly, gifts of $200 to Father James Rathbun and $400 to Jack Rathbun and $200 to the St. Vincent de Paul Society. I see no reason why the solitaire diamond ring should not go to deceased's sister as she directed. I think there should be what can only really be a token gift to the Bishop for the purposes nominated in the will, and of course it may be that the plaintiff herself will want to give effect to that kind of intention in her own will in due course. Therefore I will add to the bequests one of $1,000 on the Trusts set out in clause 5(b) of the will but order that the remainder of the estate after payment of the Public Trustee's costs and of Mr Searle's costs of $50 be vested in the plaintiff absolutely.



Solicitors:

Malley, Mahon & Co, CHRISTCHURCH, for Plaintiff
The Public Trust Office, CHRISTCHURCH, for Defendant.

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ORAL JUDGMENT OF HARDIE BOYS J.
