

12/11

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

M.1167/84

IN THE MATTER of the Trustee  
Act, 1956

1691

AND

IN THE MATTER of the estate of  
FREDERICK WILLIAM  
DOBLE late of  
Auckland in New  
Zealand, deceased

Hearing: 5 November 1986

Counsel: O'Meagher for Applicant  
Craighead for W.R. Doble Life Tenant  
Moody for Crippled Children's Association  
Kiely for Unborn Children of W.R. Doble

Judgment: 5 November 1986

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(ORAL) JUDGMENT OF THORP J

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This matter came before me this morning when all counsel were present. At that time I indicated that I was satisfied to approve the sale of the property generally in the terms proposed so long as some arrangements could be made to protect unborn children of the life tenant.

This afternoon counsel, save Mr Moody who was excused from appearance, reappeared and advised that they had agreed proposed additional terms intended to meet the question of security for unborn children, and some minor further matters which required attention, including costs.

The terms of the additional provisions seem to me generally to meet the situation. Clause (3) however should in my view provide both that "any children" are to receive a priority under the Will, and further should make clear what I suspect is intended but not made clear because of the limited time available for drafting to date, namely that the provisions for possible children which is being written into the Will is a right following any widowhood interests, but not other than as a contingent right. The Court expects and intends that there should be a further residuary beneficiary following the provision for unborn children.

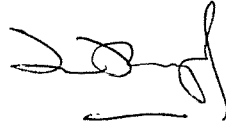
It also appears to me that Clause (2) which relates to the devolution of the half interest in the present residence could be reframed to ensure that if it is not desired to reinvest the proceeds of sale in another residence, for any reason, a fund be created from that asset. I have no doubt that the intention of counsel is the same as my own. I am not satisfied in the time they have had available the matter has been as completely covered as it could be with a little more consideration.

I should be obliged if counsel would prepare and furnish to me a draft order taking those comments into account. I have no doubt that an order can be settled and without too much delay it will carry into effect the intentions of the applicant of the other parties.

(Following discussion with Mr O'Meagher about the Status of Children Act:)

If, as Mr O'Meagher advises, the Status of Children Act does not affect this Will, the requirement that "any children" be provided for will not be necessary. In that event will counsel please supply

references to the relevant provisions in the Act when submitting the draft order.

A handwritten signature in black ink, appearing to be 'J. D. Doble', written over a horizontal line.

Solicitors:

Public Trust Office for Applicant  
Newbery, Mead, Snedden, Grace for W.R. Doble  
Malloy, Moody & Greville for Crippled Children's Assoc.  
Hesketh, Henry for Unborn Children of W.R. Doble