

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.228/83
A.100/83

**NOT
RECOMMENDED**

IN THE MATTER of the Matrimonial Property
Act 1963

AND

IN THE MATTER of the Family Protection Act
1955

AND

IN THE MATTER of the estate of RITA MAY
SAMSON formerly of
Te Awamutu but late of
Tairua, Married

BETWEEN ERNEST ROY SAMSON of Tairua
Retired

Plaintiff

AND PATRICK GEORGE TURNWALD of
Cambridge, Driver, and
KENNETH AMBROSE BENNETTS of
Auckland, Solicitor

Defendants

Hearing: 24 August 1987

Counsel: J.J. O'Shea for W. Samson, J. O'Grady, and K.A.
Bennetts
G.W. O'Brien for the Defendants
C.J. Harding for P.G. Turnwald as Beneficiary
A.S. Menzies for the Grandchildren

Judgment: 24 August 1987

ORAL JUDGMENT OF DOOGUE J

There are two sets of proceedings before the Court.
The first (M.228/83) is an application by the executor of the
Will of the Plaintiff, who has now been substituted as
Plaintiff for relief under the provisions of the Matrimonial

Property Act 1963. The second (A.100/83) is an application by the same Plaintiff for relief under the Family Protection Act 1955.

The parties have been able to reach agreement in respect of the modest estate involved. The parties do not seek any specific order from the Court, rather they seek the general approval of the Court to the settlement reached between them and authority for counsel appointed for the grandchildren to execute the Deed of Settlement on behalf of the grandchildren if the Court is satisfied that the settlement reached is not adverse to the grandchildren.

I have referred to the grandchildren in the plural although in fact there is only one grandchild who has not reached the age of majority who requires consideration by the Court, as the ten grandchildren have all reached the age of majority.

The reason for the somewhat unusual nature of the relief sought from the Court is that with the death of the original Plaintiff the persons with an interest in his estate would themselves have to commence proceedings against his estate unless the matter can be avoided by the form of settlement agreed between the parties.

To achieve the result desired by all the parties, what is deemed appropriate by the parties is that the beneficiary in the estate of Rita May Samson (the Defendants being the executor of her Will), should pay directly to the beneficiaries in the estate of Ernest Roy Samson, sums considered appropriate by the parties. As a result of the payment by the beneficiary in the estate of Rita May Samson to the two persons, namely William James Samson and June O'Grady, who wish to pursue the interest in respect of the estate of Ernest Roy Samson, the executor of that estate will discontinue both sets of proceedings. The payment from the estate of Rita May Samson to the estate of Ernest Roy Samson would be one which, in my view, would be appropriate in terms of a settlement of the matrimonial property proceedings.

Having regard to the nature of the settlement reached it would not seem to me that there was any need for consideration of the claims under the Family Protection Act. The only person who is not sui juris who is likely to be within the range of affectation of either sets of proceedings who is not in a position to consent to the settlement is a grandchild, Craig Mathew Carter. He, along with the adult grandchildren, has been represented by Mr Menzies, who has satisfied himself that there is no detriment or prejudice to the grandchildren by the intended settlement. I am satisfied that unless Craig Mathew Carter had a substantial need for relief under the provisions of the Family Protection Act 1955, he is not

adversely effected by the proposed settlement and that it is appropriate that Mr Menzies should be a party to the Deed of Settlement proposed on behalf of the grandchildren. Mr Menzies has satisfied himself that Craig Mathew Carter has no special need for assistance under the Family Protection Act 1955 and I am satisfied, from the papers before me, that it is not appropriate that any claim be pursued on his behalf and that he would not be adversely effected by the proposed settlement.

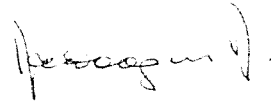
In the circumstances outlined I note the intention of the parties to complete the Deed of Settlement between them and whilst that is not something which can be formally approved by the Court, I make it clear that I regard it as an appropriate settlement between the parties.

I further note that, as already indicated, I regard the settlement as not being adverse to the interests of the only infant grandchild, namely Craig Mathew Carter.

I approve the intention of the parties that Mr Menzies, on behalf of the grandchildren and more specifically Craig Mathew Carter, should execute the Deed of Settlement on behalf of the grandchildren.

So far as the grandchildren who are sui juris are concerned, it will be a matter for Mr Menzies to be satisfied that they do consent to the proposed settlement.

So far as the infant grandchild is concerned, I think it is appropriate that I authorise Mr Menzies to execute the Deed of Settlement with the knowledge that by doing so the infant grandchild's right of claim at some subsequent time will have been determined.



Solicitors for W. Samson, J O'Grady and K.A. Bennetts:

Judd Brown & Partners
Te Awamutu

Solicitors for the Defendants:

Bennetts Morrison & O'Brien
Te Awamutu

Solicitors for P.G. Turnwald as Beneficiary:

Norris Ward & Co
Hamilton

Solicitors for the Grandchildren:

Harkness Henry & Co
Hamilton

A.100/83
M.228/83

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