IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

CP 52/87

UNDER the Matrimonial Property Act 1963

IN THE MATTER of the Estate of RALPH PATRICK GRIFFIN of Dunedin, Retired Company Manager, deceased

BETWEEN EILEEN AGNES GRIFFIN of Dunedin, Retired Secretary

Plaintiff

A N D NORMAN LINDSAY MILLAR and ROBERT GEORGE HUNTER both of Dunedin, Solicitors and NOEL ERIC PATTON of Dunedin, Chartered Accountant

Defendants

Hearing: 28th October 1987

Counsel: D.J. More for Plaintiff
R.M. Kean for Defendants and three children

ORAL JUDGMENT OF WILLIAMSON J.

This is an application under the Matrimonial Property Act 1963.

The facts are not in dispute. The Applicant and the deceased, Ralph Patrick Griffin, were married on the 2nd February 1946. Mr Griffin died on the 13th March 1986, then aged 67 years. The marriage had continued, as a happy and stable one, for some 40 years. At the time of the marriage the deceased's assets consisted only of an accumulated pay over the three and a half years that he had spent in the Army. At the age of 30 he joined Ernest Adams Ltd as Assistant Manager and very shortly afterwards was appointed Manager. When he retired he received superannuation benefits, including a sum of $50,000. During his working life the deceased invested in shares and also in a number of real properties. The Applicant was working until five weeks before the birth of their first

child, Andrea, now aged 39. There were two other children of the marriage, namely Gordon who is now aged 37, and Ralph now aged 33. The Applicant worked at times while the children were at home, either in full time employment or in part-time employment. The positions that she held at Teachers College, Polytech and the Dunedin Art Gallery were well paid ones. She used her wages to make equal contributions with her husband to various investment properties. In addition to these direct contributions of cash the evidence is that the Applicant performed more than her share of the household and family tasks because the deceased was required as part of his work to be away from home often. Also, in addition to the direct contributions by way of money paid, the Applicant contributed to various investment properties by her physical work which is described in the affidavit filed by her.

The value of the estate of the deceased at the date of death (including the re-valuation of real properties) amounted to $680,913.79. It consisted of shares and inflation adjusted bonuses of some $443,492, a Volvo motorcar valued at $20,000, a holiday home at Arrowtown with a Government Valuation of $65,000, as well as other real property, rents, superannuation moneys, insurance moneys and bank account moneys. The matrimonial home in Dunedin was registered as a joint family home and consequently passed to the Applicant by survivorship.

At the date of death of the deceased the Applicant also owned substantial assets, including shares and real property, to a total of $159,183. The will of the deceased provided for the Applicant to receive by bequest the principal residence owned by the deceased at the date of death, his holiday house at Arrowtown together with personal and household chattels including the motor vehicle. She was also bequeathed one third of the residue in the estate. The remaining two thirds were shared between the three children of the marriage.

The principles to be applied in relation to a claim of this nature have been set out in a number of decisions.

I summarised these in a case of Walter v Walter, 24th February 1986, Dunedin Registry M.95/84. I will not repeat them again in this judgment. Essentially the Court is obliged to apply the principles which were set out by the Privy Council in the case of Haldane v Haldane [1976] 2 NZLR 715. Those principles require an assessment of contributions made by an Applicant giving weight to domestic duties in the matrimonial home and dealing with the matter in relation to all of the assets rather than approaching it on an asset by asset basis. In the Walter decision I noted the differing awards that had been made prior to 1976 and to the approaches to such awards varying from awards in the region of 20% to those of 50%. I had been urged in that case, as Counsel for the Applicant submitted in this case, to accept the statement of approach in the case of South British and Guardian Trust v Plumley 3 NZFLR 534. I have not been prepared to approach the matter in exactly that way since I am of the view that the Court must be careful to apply the express provisions of s.5(1) of the Matrimonial Property Act 1976 and to deal with these matters entirely under the provisions of the Matrimonia Property Act 1963. I accept that the enlightenment over years since the earlier awards were made under the 1963 Act may well mean that the value of a wife's contributions by the performance of her ordinary domestic duties in the matrimonial home and her services and other efforts towards the property in dispute may be considered to be greater than had been considered appropriate previously.

This is a case where there is no opposition from the children who are also residuary beneficiaries. There has been no contest as to whether or not the Applicant should receive an award under the Matrimonial Property Act 1963. It is clear in this case, as indeed it has been in many other similar cases, that the motivation in bringing the proceedings is to reduce or avoid the incidence of estate duty. With that in mind it is appropriate to consider the evidence cautiously but in the light of all of the circumstances which include the fact that the children do not oppose an order. Given all of those factors I consider that in view of the length of the marriage, the substantial share of the household tasks undertaken by the Applicant and her work during the

course of the marriage both in paid employment and on various properties the proper conclusion is that she contributed in an equal way with the deceased to the acquisition of the assets held by both of them at the date of his death. On this basis, and considering the combined amount of the property held by the Applicant and the deceased at the date of death, I am of the view that it is appropriate to make an assessment of the Applicant's entitlement at 37% of the estate.

I am not, however, prepared to make any order at this stage because of the provisions made for the Applicant in the will of the deceased. For the reasons which I summarised in the case of Walter, I am of the view that benefits under the will are a factor which should be taken into account when determining the justice of any award under s.5(3) of the Matrimonial Property Act 1963. Holland J. in a case of West v West, unreported, 4th July 1985, Dunedin Registry M.94/84, said that:-

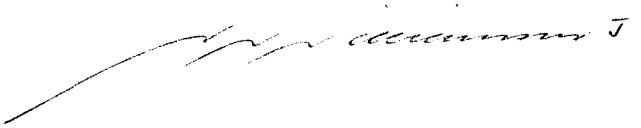
> "If a claim be established it should then be assessed. Once the assessment is made consideration should then be given as to whether it is just to vary that assessment or even eliminate it because of the financial provision made for the claimant from the estate."

Counsel have referred me to the approach taken in this regard by Cook J. in a case of Holland v Holland, 16th April 1986, Christchurch Registry M.707/84. In that case, for the reasons set out, His Honour, after making an assessment, adjourned the hearing for Counsel to make further submissions as to the making of an order. His Honour said:-

> "In my view the proportion to which she is entitled should be 45%, before taking into account her succession under the will. If she is prepared to and does renounce that succession, that proportion can stand. Otherwise it will have to be reduced by the legacy and an amount estimated to be the present value of her life interests."

I would be prepared to follow a similar although not identical course. I am conscious that this matter has been brought on for hearing at short notice and that Counsel may well wish to consider further the Applicant's position in relation to the benefits she is entitled to receive under the will and to the assessment made under the Matrimonial Property Act 1963.

Accordingly the matter will be adjourned with leave reserved to Counsel to make further submissions in writing concerning those aspects and concerning an appropriate form of order. They may also wish, if necessary, to deal with costs in such a Memorandum.



Solicitors:
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Webb Brash Ward & Co., Dunedin, for Defendants