

IN THE HIGH COURT OF NEW ZEALAND  
ROTORUA REGISTRY

M.113/86

Under the Family Protection Act 1955.

IN THE MATTER of THE ESTATE JANE ANN  
SINGLETON HANN  
formerly of Rotorua  
now deceased.

BETWEEN JANE ANN SINGLETON  
THESSMAN of Rotorua  
widow.

Plaintiff

AND THE PUBLIC TRUSTEE as  
executor and trustee  
in the Estate of JANE  
SINGLETON HANN formerly  
of Rotorua, now deceased.

Defendant

Hearing: 21 October 1987

Counsel: G. O'Sullivan for Plaintiff  
G. Steed for Defendant

Judgment: 21 October 1987

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ORAL JUDGMENT OF ANDERSON J.

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This is a claim brought pursuant to the Family Protection Act by one of two surviving daughters of the testrix who died at Rotorua in April 1986 aged approximately 100 years. By her will executed approximately three years before her death the testrix made specific bequests of \$6,000 to each of her two daughters and small

bequests to various grandchildren. The residue of the estate was left to the Waikato Hospital Board, the St John Ambulance Association and the N.Z. Red Cross Society. These latter two organisations have entered appearances and abide the decision of the Court. The Waikato Hospital Board has taken no steps from which fact one may infer an attitude similar to the other parties'. The specific bequests are not to be disturbed by the plaintiff who centres her claim on the residuary estate which is approximately \$61,000 less a tax liability of approximately \$1,000 and the costs of these proceedings and incidental administration. The residuary estate is therefore quite modest.

The plaintiff is now aged 79 years. She lives in rented accommodation, has a modest capital sum and derives her income from the interest on that sum, a pension derived from her late husband's employment with the New Zealand Rail, and superannuation. The testrix lived with the plaintiff for some 35 years before her death.

It is plain from the papers that the relationship between mother and daughter was affectionate and mutually supportive. The concern of the plaintiff and the basis upon which she seeks further provision is that at her age she does not have the security of future housing and care in her old age and not the least among her concerns is the present policy of the New Zealand Government to ensure that the assets of the state including housing are employed in a more commercial spirit than has previously been the case.

All Counsel who have given careful consideration to the papers and the interests of their respective clients, are of the view that the testrix breached her moral duty to the plaintiff and that the rectification of such breach requires the residuary estate to be vested in the plaintiff. I do not intend to traverse in greater detail the basis of that view with which I entirely agree. I accordingly

order further provision for the plaintiff to be provided by varying the will of the testatrix in the manner following: That clause 4(a) be deleted from the will of the deceased and that the following clause be substituted therefor:

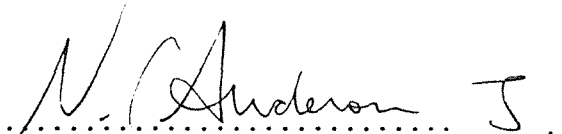
- (a) The sum of six thousand dollars (\$6,000) to my daughter Alice Caroline Tulloch, she being alive at my death.

That clause 4(b) of the will of the deceased be deleted and the following clause be substituted therefor:

- (c) The whole of my estate both real and personal whatsoever nature and wheresoever situated not herein before otherwise disposed of unto my Trustee to pay thereout my just debts, funeral and testamentary expenses and death duty payable in respect of my estate and to stand possessed of the residue for Jane Anne Singleton absolutely.

In all other respects the will of the said deceased is confirmed.

I make the following orders as to costs. In relation to the New Zealand Red Cross Society I allow costs in the sum of \$500 inclusive of disbursements and GST. I make a similar order in relation to the costs of the St John Ambulance Association and in respect of Mr McKechnie.

..... J.

Solicitors for Plaintiff

O'Sullivan Clemens Briscoe & Hughes  
Rotorua.

Solicitors for Defendant

District Solicitor  
Public Trust  
Rotorua

Solicitors for Grandchildren:

McKechnie Morrison Shand  
Rotorua