

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

NZLR

CP.109/87

IN THE MATTER of the Family Protection
Act 1955

A N D

IN THE MATTER of the estate of
GARRY JAMES GILCHRIST
late of Dunedin,
Driver now deceased

BETWEEN

O'SULLIVAN of Dunedin,
solo parent as guardian
and ad litem for

a minor

Plaintiff

A N D

TONY ALAN GILCHRIST
of Dunedin as Executor
of the estate of
the said Garry James
Gilchrist

Defendant

Hearing : 11 July 1988

Counsel : Mr J. O Medlicott for the Plaintiff
Ms K Weatherall for the Defendant

Judgment : 11 July 1988

ORAL JUDGMENT OF ROBERTSON J

Garry James Gilchrist died at Dunedin on 20 March 1987 leaving a Will dated 4 November 1986 in respect of which the defendant was named as Executor.

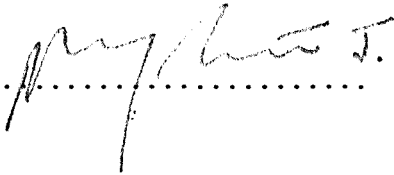
These proceedings have been brought on behalf of his infant child for whom no provision was made in the Will. It

is clear that the child was a person to whom a moral duty was owed and without question there was a breach of that duty. There can be no question of the child's needs, she is as yet only 5 years of age.

The estate is modest. On the figures presently provided to me it is about \$20,000. The only competing claim is a friend with whom the deceased was residing at the time of his death. She is entitled to the residue of the estate providing she was living with the deceased at the date of death, otherwise it is divided between the deceased's siblings. The appropriate parties have been represented by experienced counsel. It has been suggested that this infant child should receive 3/4 of the residuary estate the other quarter to be dealt with in terms of the Will. It appears to me that that is a just and reasonable compromise and certainly consistent with what a wise testator would have done appraised of the total situation as at the date of death.

There will be an order under s.4 of the Family Protection Act amending the Will of the deceased to provide that the residuary estate shall be divided into 4 equal parts, one part to be dealt with in terms of the Will, the other 3 parts to be held by the New Zealand Guardian Trust Company Limited in trust until such time as _____ attains the age of 20 years with power for the Trustee to pay to the child's guardian such part of the income as it shall decide for the education, maintenance and advancement for the child.

There will be an order for costs in the sum of \$750
together with disbursements as fixed by the Registrar.

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Solicitors :

Aspinall, Joel & Co., Dunedin
Weatherall, Dunedin