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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A No.1276/83

**NOT
RECOMMENDED**

UNDER

The Family Protection
Act 1955

AND

IN THE MATTER

of the Estate of
ROBIN TE WIRI HANA
WAIPAPA RIDDEL late
of Papatoetoe, Fitter

BETWEEN

SUSAN RIDDEL of Te
Kuiti, Widow

Plaintiff

AND

THE PUBLIC TRUSTEE OF
NEW ZEALAND as
Executor and trustee
of the will of the
said ROBIN TE
WIRIHANA WAIPAPA
RIDDELL

Defendant

Hearing: 16 February 1988

Counsel: Miss Sharp for the Plaintiff
Mr Fenton for Richard Alan Ross
Mr Hall for Residual Beneficiary
Miss Opai for Defendant

Judgment: 16 February 1988

ORAL JUDGMENT OF ROBERTSON J

Robin Te Wirihana Waipapa Riddell died at
Auckland on 3 November 1982, he was aged 53. He left a
last will dated 4 July 1975 in which he appointed as
executor and trustee the Public Trustee and left his

entire estate to his son Miles Wayne Riddell.

Miles Riddell was born 5 August 1959. His mother had married the deceased in the late 50's and that marriage subsisted until about 1968. When the parties separated Miles went with his mother. There was a period in which he did not have much contact with his father but after he came to school in Auckland the relationship was rekindled.

On the 2 November 1974 Robin Riddell married the plaintiff in these proceedings, she at that stage having in her care Richard Alan Ross who was a child of a former relationship which the plaintiff had had. The marriage between the plaintiff and the deceased was on the evidence available, short and stormy. The claimant Richard Ross was a step child of the deceased. During the period in which his mother lived with the deceased he lived there at least part of the time and upon the final breakup of that marriage a maintenance order was made in respect of Richard against the deceased.

The plaintiff issued proceedings in December 1983 almost exactly to the day 12 months after the grant of probate. It is clear that her concern throughout was her son Richard and at no stage has she seriously maintained a claim on her own behalf. With hindsight it would probably have been better if the proceedings had been commenced by her as guardian ad litem for her

son because in effect that is what her proceedings were. I need not traverse the difficulties which arose as a result of non service within 12 months for eventually Mr Justice Sinclair in a considered decision permitted service and orders were made for representation of Richard by counsel. The lack of action which typified the commencement of these proceedings seems to have dogged them down to the present time. Eventually the matter came before me this morning and counsel for the relevant parties advised me first that the plaintiff was not making any claim in her own right, secondly that the parties were each of the view that an award to Richard Ross in a sum of \$6,000 would be an appropriate exercise of the Court's discretion.

Section 3 of the Family Protection Act 1955 provides that among the categories of persons entitled to claim are step children of the deceased who were being maintained wholly or partly or were legally entitled to be maintained wholly or partly by the deceased immediately before his death. The evidence suggests that the deceased had for a variety of reasons ceased paying the money he had been ordered to in 1977 and that during 1982 proceedings had been filed with a view to cancelling the maintenance order in respect of Richard Ross.

I have reached the view that whether the deceased was maintaining Richard or not, Richard was legally entitled to be maintained at least in part and therefore I find that Richard is a person who is entitled to bring a claim under the Act. In determining whether or not there has been a breach of the legal duty which the deceased under the Act had to Richard, counsel raised the fact that he is a step child and within that limited degree needs to be considered. My attention has been drawn to Chapter 14 of Patterson, Family Protection and Testamentary Promises in New Zealand and it is clear that the thrust of the Act in cases such as this is directed more to strict economic questions of maintenance and support rather than a more liberal interpretation of those words which have been given by the Courts in cases of natural children.

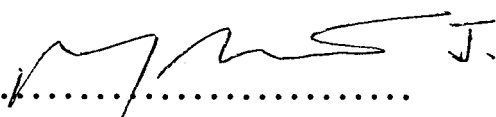
On the date of death of the deceased Richard Ross was approaching 13. As I read the evidence there had been virtually no contact between him and the deceased for some 5 years. It appears to me that his obligation to this boy was one best considered in terms of actual maintenance or support for a period of between 4 and 6 years, in other words, the period until his step child could reasonably be expected to be independent of parental assistance. Viewing the matter on this basis it appears to me that the suggested figure of \$6,000 is an appropriate award so as to meet the breach of obligation without interfering with the testamentary

disposition to a degree which is greater than necessary.

Accordingly the Court being satisfied that the deceased failed to make adequate provision from his estate for the proper maintenance and support of Richard Ross it is ordered that from the estate a legacy of \$6,000 be paid with interest thereon to accrue only from the date hereof. Such sum shall be held by the defendant until Richard Ross shall attain the age of 20 years or marry under that age. The money will be held in trust so as to permit the defendant to apply income and or capital towards the maintenance, education or advancement of the said Richard Ross.

Income or capital remaining as at the 20th birthday shall be paid to him. Leave is granted to all parties to apply for such other or further direction as may be necessary. The plaintiff in these proceedings was legally aided and she has properly not proceeded with her claim. Because she brought the claim for the benefit of her son the Court might have thought in many circumstances that her costs should have been paid out of the residue of the estate. To make such an order is to require Miles Riddell to pay her costs. Because of the way in which these proceedings have been conducted and particularly her lack of action, Miles Riddell has already been put to considerable expense which he should never have had to face.

I am not prepared to make any award of cost in favour of the plaintiff notwithstanding the fact that she is legally aided. As far as Richard Ross is concerned counsel was appointed by the Court to represent him and I allow a sum of \$675 in respect of costs, disbursements and GST which shall be paid out of the estate. The residuary beneficiary does not need an order as it is his money we are dealing with and the defendant does not require an order.


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Solicitors/:

Newbery Mead Snedden Grace, Auckland

Russell McVeagh McKenzie Bartleet, Auckland