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NLLR

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

**NOT
RECOMMENDED**

M.242/88

UNDER the Trustee Act 1965

IN THE MATTER of the Estate of GEORGE
HENRY TWIDLE

BETWEEN REGINALD JOHN FARRELL of
Morrinsville, Garage
Proprietor and BERNADETTE
MARY GARLAND of Matamata,
married woman, and THE NEW
ZEALAND CRIPPLED CHILDRENS
SOCIETY (INCORPORATED) a
society duly incorporated
under the Incorporated
Societies Act 1908 and having
its registered office at
Wellington

Plaintiffs

Hearing &
Judgment: 16 December 1988

Counsel: R. Craven for Plaintiffs.

ORAL JUDGMENT OF ANDERSON J.

On 17 October 1955 probate was granted by this Court in respect of the estate of George Henry Twidle (hereinafter called "the deceased") who had died on or about 29 August 1955 leaving a last will and testament executed by him on 9 April 1951. By such will he bequeathed all his money, bank account deposits, clothing and effects of a personal nature to Mrs Jessie Farrell and gave and bequeathed all his real and the balance of his personal estate upon trust to permit Mrs Farrell to occupy his residence at Morrinsville and to use the chattels associated with that dwelling for life. There was a gift in remainder to the New Zealand Crippled Children Society

(Incorporated) and the two children of Mrs Farrell, namely Reginald John Farrell and Bernadette Mary Garland. One part of the residuary estate was to go to the New Zealand Crippled Children Society and the other part to Mrs Farrell's children.

The deceased left surviving him a widow, Amy Elizabeth Twidle, whose disinheritance led her to apply to the High Court at Hamilton for provision pursuant to the Family Protection Act 1955. That application was determined on 5 September 1957 by Mr Justice Finlay who ordered that out of the proceeds of the realisation of the assets of the deceased after the death of Mrs Farrell, Mrs Twidle should be paid the sum of 300 pounds; 200 pounds thereof was to be deducted from the half share of the residue bequeathed to the New Zealand Crippled Children Society and 100 pounds thereof was to be deducted from the half share of the residue bequeathed to Mrs Farrell's children.

Pursuant to the grant of probate transmission of the deceased's house property at Studholme Street, Morrinsville was registered in the names of Frederic Kingsford and Wilson Roziere Garrard, solicitors practising at Cambridge. In September 1958 transmission of the house was registered into the sole name of Mr Kingsford as surviving trustee and that trustee died in 1965. Probate of Mr Kingsford's will was granted to his widow, Mrs Jean Gordon Kingsford in October

1965 and that lady died in February 1979. Probate of her will was granted to the South British Insurance Company in February 1979.

On or about 9 April 1985, Mrs Farrell died so that according to the will of the deceased and the decision of Mr Justice Finlay, the sum of \$600 is now payable to Mrs Twidle and the house property which represents effectively the whole of the residuary estate is now due to be called in, converted into cash and distributed to the beneficiaries in remainder. Enquiries have indicated that Mrs Twidle is still alive. She would now be quite elderly and is apparently cared for in a rest home in Northland with her affairs being administered by the Public Trustee pursuant to a power of attorney given some years ago. Difficulties have arisen in giving effect to the will of the deceased and Mr Justice Finlay's order because there is no present trustee in respect of the deceased's estate. It is a matter of inevitable inference that before his death Mr Kingsford had discharged all his functions as executor and held the real estate solely as trustee in accordance with the trusts of Mr Twidle's will.

Mrs Kingsford could not inherit the functions of trustee which were the responsibility of her late husband. Nor could the South British Insurance Company Ltd have any more entitlement to act as trustee in the estate of the deceased than Mrs Kingsford. Indeed that company's concern in this

regard has initiated the present proceeding with a view to ensuring that the Court in its historical function of supervising the estates of deceased persons now acts to give effect to the testamentary provisions made by Mr Twidle almost 40 years ago.

This is a case where, in terms of s.51 of the Trustee Act, it is manifestly expedient to appoint a new trustee or new trustees to ensure that the wishes of the deceased are carried out. It is impracticable to have new trustees appointed without the assistance of the Court. I deem it desirable that two trustees be now appointed to give effect to Mr Twidle's will and the decision of the High Court delivered by Mr Justice Finlay. One trustee ought be Mr Reginald John Farrell, one of the plaintiffs herein, by reason of his residence in Morrinsville where the property is situated and his personal interest in the deceased's will. I think it desirable also that a solicitor who by reason of such status is an officer of this Court be also appointed a trustee. Mr Frederick Laurie Lang of Morrinsville, an experienced and, with respect, appropriate agent of this Court as it were, has indicated his willingness to accept appointment.

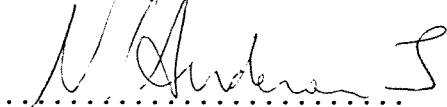
Accordingly, pursuant to the powers vested in the Court by s.51 of the Trustee Act 1956, I appoint Reginald John Farrell and Frederick Laurie Lang trustees in respect of the trusts created by the will of George Henry Twidle dated 9 April

1951. I further direct that when the trust property shall have been sold and the trusts discharged along with the provision made for Mrs Twidle by this Court in 1957, the trustees shall file in Court a memorandum to that effect.

The costs of this application are a proper charge against the residuary estate. There is no need whatever for me to expand further on the issue of costs, the Court being, of course, entirely confident that Mr Lang in his capacity as trustee will ensure that only such costs as are reasonable and proper are met by the estate.

In order to complete the machinery necessary for giving effect to the deceased's will, I make an order pursuant to s.52(1)(a) vesting in the new trustees the land more particularly described in the documents filed in this proceeding.

I am obliged to counsel for their assistance.


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Solicitors for the Plaintiffs:

Allen Needham & Co
Morrinsville