

22/12

N2LR

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

**NOT
RECOMMENDED**

CP 200/86

UNDER THE Family Protection Act
1955

AND

IN THE MATTER of the Estate of VALERIE
JEAN WILSON-BROWN deceased.

BETWEEN ANTHONY ALLAN WILSON, WADE
WARREN WILSON and MEGAN MARIE
WILSON, all of Tauranga,
Infants, by JESSE GRACY WILSON
of Tauranga, Engineer, their
next friend

PLAINTIFFS

AND DOROTHY JANE HUNTER of Thames,
Solicitor as Executrix in the
Estate of VALERIE JEAN
WILSON-BROWN

DEFENDANT

Hearing &
Judgment: 16 December 1988

Counsel: Mr Richardson for Plaintiff
Mr Menzies for Defendant

ORAL JUDGMENT OF ANDERSON J.

This is a proceeding under the Family Protection Act 1955 brought by Jesse Gracy Wilson as the next friend of the three children of Valerie Jean Wilson-Brown. The children are Anthony Allan Wilson, born on 14 July 1970, Wade Warren Wilson born 29 March 1973 and Megan Marie Wilson born 29 February 1977. The value of the deceased's estate is approximately \$340,000, more than \$200,000 of which represents the proceeds of two life insurance policies taken out by the deceased in

about 1982.

The deceased was formerly married to Mr Jesse Wilson but that marriage failed and was ultimately dissolved. The deceased re-married to an American living in New Zealand, Mr Brown, and Mr Brown and the deceased decided that in mid 1985 they would sail an outrigger canoe to Polynesia. It is probable that the will, the subject of this proceeding, was made as part of the planning for what was likely to be a risky voyage. Probably in the vicinity of Great Barrier Island, the deceased's vessel broke up and the deceased and Mr Brown were lost.

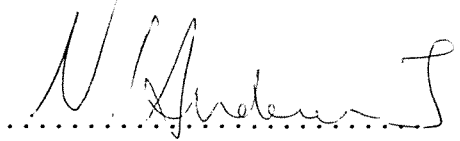
In the High Court at Hamilton on 4 July 1986 an Order was made as to presumption of death and probate of the deceased's will was granted to the defendant. The deceased appointed her sister, Cathy Marie Bennigson of Massachusetts in the United States, the guardian of her children and bequeathed to Mrs Bennigson the proceeds of the insurance policies, the testamentary words of bequest plainly indicating that the deceased expected her sister to become the testamentary guardian who would apply the insurance monies to the welfare of the children. Mrs Bennigson's subsequent conduct plainly indicates that she was conscientiously and affectionately intending to discharge the serious responsibilities cast on her by the deceased and expected by the deceased in relation to the application of the insurance monies. I make that observation

to indicate how manifestly exemplary Mrs Bennigson's conduct has been in relation to her nephews and niece and to indicate her loyalty to the memory and wishes of her dead sister.

In 1985 Mr Jesse Wilson, having contested the custodial arrangements provided by the deceased's will, obtained an order for custody in the District Court at Tauranga. By such a process the deceased's expectation that Mr Bennigson would be the guardian of the children was negatived. It became consequentially inapt that the insurance monies bequeathed in the context of a precatory trust should remain with Mrs Bennigson as she has plainly acknowledged by her instructions to counsel in this matter.

I have before me a Draft Order which is fairly extensive and detailed but the result of which is intended to shift the benefit of the insurance policies from Mrs Bennigson to the deceased's children with consequential adjustments to the identity of trustees. It is unnecessary for me to relate in more detail the terms of the draft order and the patent justification for it on the facts disclosed by the very helpful papers filed herein. I have no doubt that the usual principles relevant to Family Protection Act claims compel and justify the provision now sought in terms of the draft order and I make orders accordingly save for the deletion of the phrase "(by consent)" appearing at line 9 on page 1 of the draft.

I am obliged to counsel in this matter and I observe that the documentation is of a very high standard.



A handwritten signature in cursive script, appearing to read "G.R. Aislabie", written over a horizontal dotted line.

Solicitor for the Plaintiffs:

G.R. Aislabie Esq
Tauranga