

AZLR

IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY

CP 25/88

**NOT  
RECOMMENDED**

UNDER THE Family Protection Act 1955 and  
the Matrimonial Property Act  
1963

IN THE MATTER of the Estate of WILLIAM  
TAYLOR BLENKINSOP  
Deceased

BETWEEN O.M. BLENKINSOP  
  
Plaintiff

AND THE PUBLIC TRUSTEE  
  
Defendant

Hearing & Judgment: 27 July 1988

Counsel: W. Scotter for Plaintiff  
P. Connell for Defendant  
G. Boot for Nephews of Deceased

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ORAL JUDGMENT OF ANDERSON J.

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The plaintiff claims pursuant to the Family Protection Act 1955 and the Matrimonial Property Act 1963 in respect of the estate of her late husband to whom she was married for some 16 years, and with whom she had lived in a de facto relationship for a similar period of time prior to the marriage. Virtually all of the matrimonial assets were held in the name of the deceased who determined at the time of making his last will that his wife should be deprived of the ownership of any part thereof in order that what he perceived erroneously to be his sole property should remain within his own family. He accordingly left a pittance as a legacy to his wife and a life interest in the matrimonial home. The bulk of

his estate was left to three nephews, one of whom is still a minor. Plainly cognisant of their aunt's moral claim, the adult nephews have agreed to a proposal which is now submitted to the Court for approval. The nephew who is a minor is unaffected in his entitlement by such proposal. All parties are to be commended on their commonsense and appreciation of the justice in this case in coming to an arrangement for submitting to the Court. A draft order has been presented to me and, subject to some fine tuning of the same, I accept as entirely appropriate the arrangement agreed to.

It is unnecessary for me to traverse the affidavit evidence. I content myself with recording that the plaintiff had a firm moral claim which is justly met by the arrangement. The Matrimonial Property Act proceedings are, in the circumstances, superfluous and they are dismissed without costs.

In relation to the Family Protection Act proceeding, I make orders in terms of the draft order submitted subject only to the following amendments.

I make orders in terms of the draft save for clauses 1.3, 1.4 and (3). The order I make in relation to 1.3 and 1.4 is as set out in the draft but with the following words interpolated in each case between "immediately" and "transfer" as follows:

"Upon payment to him of the sum of \$500 by way of reimbursement of a payment on a call on shares".

Clause 3 of the draft order is amended by fixing in relation to the costs of Mr P.M. James, the amount of \$750; in relation to the costs of Mr K.G. Hales, the sum of \$660; and in relation to the costs of Mr G. Boot, the sum of \$550.

In all other respects orders are made in terms of the draft.

*N. Anderson J.*  
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Solicitor for the Plaintiff:

Harkness Henry & Co.  
Hamilton

Solicitor for the Defendant:

The District Solicitor  
Public Trust Office  
Hamilton