

28/7

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M. No.94/89

IN THE MATTER of the Matrimonial
Property Act 1963

A N D

IN THE MATTER of the Estate of NORMAN
LESLIE HIDER late of
Christchurch, Retired
businessman, deceased

BETWEEN AUDREY RITA HIDER of
Christchurch, Widow

Applicant

A N D

AUDREY RITA HIDER of
Christchurch, Widow,
RICHARD NORMAN HIDER,
ROBERT WINSTONE HIDER and
PHILLIP NICHOLAS HIDER
all of Christchurch, sons
of the deceased, as
Executors and Trustees of
the Will of the said
Norman Leslie Hider,
deceased

Respondents

Hearing: 10 July 1989
Counsel: G.P.P. Cone for Applicant
R.A. Osborne for Respondents
Judgment: 10 July 1989

ORAL JUDGMENT OF TIPPING, J.

This is a claim under the Matrimonial
Property Act 1963. The Applicant is Mrs Audrey Rita Hider
the widow of the late Norman Leslie Hider who died on

NOT
RECOMMENDED

785

29 May 1988 at the age of 64. The widow brings the claim on the basis of contributions which she contends she made to the assets which represent the deceased's estate. There is no doubt whatever from the evidence that the Plaintiff did make substantial contributions and it is not necessary for me for present purposes to discuss them in any detail. The claim is effectively unopposed. The deceased's will is a simple one. It appointed the widow and the deceased's three son as trustees. It gave the widow all the personal chattels, a legacy of \$5,000.00 to each son, a life interest to the widow and on her death the residue was left equally to the three sons with appropriate substitution.

The case is made a little more complicated than normal by the fact that after the will the parties entered into a matrimonial property agreement in respect of part of their assets. The will is dated 7 August 1986 and the matrimonial property agreement is dated 17 December 1987. A further complicating factor is that the deceased owned some of his assets on a joint tenancy with his widow and thus assets passed to her by survivorship outside the terms of the estate. Counsel have helpfully addressed me on the judgment in Mora's case and I have considered that aspect along with the other features of the case.

If one writes out of the present balance sheet those assets which have already been the subject of division and are simply the deceased's share pursuant to that division one is left in round figures with an estate of approximately \$500,000. That figure takes in the property

at Chepstow Avenue, or more accurately, the estate's half share on the basis of Government valuation. Writing up that asset by a figure which I was informed from the bar was broadly agreed, the estate for division comes to some \$580,000.00. It is my view that a fair assessment of the contributions made by the widow to the deceased's assets is a figure of 50%. Applying that 50% to the sum of \$580,000.00 one reaches the sum of \$290,000.00. If one vests, as I think should be done, the estate's half share of Chepstow Avenue in the widow so that she becomes the absolute owner of that property, the sum of \$120,000.00 or thereabouts must be deducted leaving arithmetically a balance of \$170,000.00.

There are some unusual features of this case particularly in the survivorship area in that it could be said that the deceased has to an extent ordered his affairs so that the widow should be provided for by survivorship. I do not propose to take any great account of that but it seems to me that this is a feature which does warrant some consideration. Having given all the matters that were put to me careful consideration it is my judgment that the widow's claim is valid and should be satisfied on the following basis:-

- (1) That the deceased's interest in Chepstow Avenue should be vested in the Applicant.
- (2) That to reflect the balance of the claim the sum of \$150,000.00 either in cash or in kind should be vested in the Applicant.

That I think will be sufficient to enable the parties to prepare a draft order for my consideration implementing the broad framework in a way that is appropriate to all concerned. I invite the submission of such a draft bearing the endorsed approval of both counsel as soon as the parties are able to give consideration to the matter. In addition to the foregoing the Applicant is in my view entitled to some provision for costs. I award her the sum of \$2,500.00 plus disbursements to be settled by the Registrar in the case of any disagreement. That amount will of course be a charge on the balance of the deceased's estate.

Acc. 1. 7