LEGACY LAW

Protecting the assets in your family tree

RECORD AWARD IN A DECEASED ESTATE

In February 2018, the son of a six-year affair between the late business mogul John Hemmes and Fiona Cameron, was awarded $1.75 million[1] from Mr John's estate. This is a new record and, while the facts were unusual, should be factored in large estates.

The legal community was watching this case with interest for a few reasons. One was that it seemed that Mr John lead an affluent life style yet had minimal assets and secondly he had never acknowledged the son to be his own.

Justice Lindsay awarded the sum to Edward Cameron, the son. Mr Cameron was born in 1990, a product of an affair between his mother and the deceased. The deceased refused to acknowledge the son until Family Court orders were made in 1995 following a DNA test. Over 13 years, the deceased was compelled to make child support payments to the sum of $300,000. He made no other contribution to the upbringing of the plaintiff.

The plaintiff sought family provision relief under Chapter 3 of the *Succession Act 2006* (NSW) in relation to the estate of the deceased.

Mr John owned his large home in Vaucluse, "The Hermitage", as joint tenants with his wife Merivale. The property was valued at $34 million. The legal implication of this is that such an asset did not go into his estate but passed on the moment of death to Merivale. Mr John died on 1 March 2015 and by a will dated 14 January 2015 left $2 million to a person named as his "general manager administration" and the balance of his estate to his widow and his two adult children. He left a gross estate valued at $363,964, with liabilities totalling $661.969. This left his estate with a negative value of $298,005.

The plaintiff amended his family provision order to contend that the 'notional estate' be the subject of the claim. Although the defendants to the proceedings opposed the claim, they agreed to set aside a fund of $4.1 million to be held in the controlled account of their solicitor. The plaintiff made a claim on the fund for his 'proper maintenance, education and advancement in life.'

The defendants rejected the provision of the order on three grounds:

1. The deceased made adequate provision for the plaintiff through the child support payments;

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[1] Estate Hemmes; Cameron v Mead [2018] NSWSC 85

2. The deceased had no relationship with the plaintiff and only had 'bare paternity'; and

3. The plaintiff is an adult who can take care of himself.

They alternatively claimed that the provision should not be any more than $1 million. This ceiling on damages has now been smashed by this decision.

Justice Lindsay stated [at 56]:

> *No provision was made for the plaintiff in the deceased's will. Neither a person guided by wisdom and justice, nor a person guided by current community standards, could reasonably conclude that the deceased's bare payment of child support payments, under compulsion of law, has left the plaintiff with adequate provision, etc, from the estate, or notional estate, of a father of the deceased's affluence. The plaintiff is a young man, unaided by paternal support beyond child support payments, who certainly has the advantages of youth and potential, but accompanied by a lack of substantial wealth that commonly accompanies youth. The defendants' primary case (that the plaintiff's summons should be dismissed) must fail.*

The Court held that provision for Mr Cameron come out of the 'notional estate' of the deceased. This is a concept unique to NSW in Australia and applies where the deceased may have kept his estate small by leaving his assets in trusts set up while he was alive. "Notional estate" means that attempts to keep estate assets "out of harm's way" may well not succeed.

The sum of $1.75 million was awarded (with some costs). We understand that this is a record award for such a case in NSW.

We suggest that, with some planning that we are doing in other cases for our clients, the award could have been lower.

Please contact us if you or someone you know may want to seek or defend such a potential award.