



Family protection claim by estranged children in multimillion dollar estate

BY **SHARON CHANDRA**

THE 2018 HIGH COURT CASE OF *Cartwright v Joseph* [2018] NZHC 2383 (11 September 2018) involved a multi-million dollar estate where a family protection claim was made by children who were estranged from the deceased. The deceased had made no provision for his daughters, Cathy and Sarah, in his will and went so far as to explicitly state the reason why no provision was made for Cathy.

Cathy and Sarah were children to the deceased's first wife. Mr Harrison began a subsequent relationship with Nita Joseph, which lasted for more than 20 years. Their relationship ended by way of Mr Harrison's death.

Under his will, the entire estate was to go to Nita. The will specifically expressed a wish not to provide for Cathy due to his estranged relationship with her and the court considered this portrayed a "chronic sense of bitterness and betrayal" by the deceased. Sarah was not specifically provided for in the will and was only to receive a bequest in the event that Nita was not living (which was not the case).

As a result of the lack of provision for them from the estate, Cathy and Sarah made a family protection claim for proper maintenance and support.

Much of the evidence focused on Sarah and Cathy's respective

relationships with their father. Both initially had a close relationship with him, but it deteriorated at a young age after their parents separated.

By the time of the deceased's death, Cathy's relationship with her father had deteriorated to the point where she had been estranged from him for 30 years. While Sarah had maintained some form of a relationship, it was found to be unstable and strained.

At issue

The executors conceded there had been a breach of moral duty. However, the issues for the court were twofold:

- 1 The quantum of compensation; and
- 2 How best to compensate Sarah and Cathy given the majority of the estate was tied up in land.

Sarah and Cathy sought provision of 15% from the estate and the executors sought 6.5%. It was accepted by both children that they were not in financial need. In deciding quantum, the court considered an award of 10% was appropriate in the circumstances, in keeping with the authorities to date.

The court then turned its mind to assessing the form the award should take. A balance was required between allowing Sarah and Cathy to each receive their 10% share while still allowing Nita to remain on the land, given that was the deceased's express wish.

A number of various options were traversed and the court came to the conclusion that one of the parcels of land should be sold in order to pay a cash sum to Sarah and Cathy.

This case is interesting in that it serves a reminder for practitioners that, even in circumstances where a parent is estranged from a child and there is a clear expressed wish not to provide for that child, a moral duty is still owed. ■

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