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## **Estate Planning Tasmania News**

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In this issue, we discuss how judges approach the rights of someone making their Will to dispose of their willable estate, in their own way, in circumstances where there is a possible family provision claim from a person who would like to receive more of the estate of the person writing the Will.

### **Case Watch: *Revell v Revell* [2016] NSWSC 947 – Implications for Willmakers**

It is important to know where the limits are to the ability of an adult to dispose of their Willable estate in the form that they want. A New South Wales judge made this comment in the case of *Revell* which was about a son claiming further provision from his father's Willable estate.

Justice Pembroke said:

*"...within the limits of the law, [a Willmaker] may dispose of his estate as he sees fit. Adult children have no automatic right to a share in the estate of a parent. Nor do they have any automatic right to equality between them".*

The Willmaker had arrived in Australia in 1953 with very few assets. He died at 90 years of age and left an estate worth approximately \$10 million. At the time of his death he had two adult children from a first marriage, and a second wife to whom he had been married to for 22 years. He left \$1.5 million to each of the adult children and everything else to his second wife.

The Applicant for further provision was his sixty year old son. Both the daughter and the second wife defended the Will.

There was evidence in the case that the son had received a privileged childhood, and that the Willmaker had been generous to the son during the son's life. Examples of the generosity were an extended overseas holiday as a graduation gift, and significant cash gifts. The Court considered that the level of provision the the Willmaker made to his son during his lifetime exceeded what most Australian children could reasonably expect to receive. Further evidence existed that there had been a troubled relationship between the Willmaker and the son; a disparity of work ethic between the Willmaker and the son; and comments from the Willmaker that his son only contacted him "when he wants money".



**Brittany Clark**  
Lawyer

The Willmaker left a statement explaining why he had not made greater provision for his son.

The Court was required to consider what constituted adequate provision in the circumstances.

The son had minimal personal assets and was unemployed. He was engaged to a woman who had assets valued at around \$1 million, including a home where the son lived. The son suffered from some health concerns but had a positive prognosis.

Justice Pembroke noted that "[a]dequacy is of course a relative concept. It requires a broad evaluative assessment" and noted further that "[r]espect should be given" by the Court to the Willmaker's own decision of what was adequate. The Judge considered that the statement of the Willmaker revealed careful thought on behalf of the Willmaker. He considered that the Willmaker had applied rational and sensible consideration to his decision about about his gift to his son, and the Court should naturally respect and give deference to that statement in the circumstances of the case.

The Court held that the gift in the Will of \$1.5M to the son was adequate in the circumstances. Justice Pembroke said before dismissing the son's application: "I have reached the conclusion that the [son's gift] of \$1.5 million was 'adequate' in the circumstances for his proper maintenance and advancement in life. Adequate means no more than sufficient. It does not connote generosity. It is a word of circumspection that implies no more than is necessary: *Wilcox v Wilcox* [2012] NSWSC 1138 at [23]. As Bray CJ said in *Re Estate of Bridges* (1975) 12 SASR 1 at [5-6], the will should be interfered with only 'so far as is necessary to make adequate provision ... but no further'".

### **Why do we think this case is important?**

This case is important for everyone who writes a Will. It shows that the Courts do not always give people more than what the Willmaker provides. It shows the usefulness in some circumstances of leaving statements about why a particular provision is made. And it shows that people who make claims should not assume that the Court will necessarily be more generous towards them than the person who made the Will.

It also shows the care and consideration that must be taken by anyone who is considering making an application for a greater share of an estate.

It is also worth remembering what Justice Pembroke said:

*“Adult children have no automatic right to a share in the estate of a parent. Nor do they have any automatic right to equality between them”.*

**Brittany Clark** works with and supports Sam McCullough and Kate Hanslow in the areas of Estate Litigation and Estate Planning.

#### How Worrall Lawyers can help:

- we provide a full range of estate planning services so that the risk of a claim against your Will is lowered; and
- we provide a full range of estate litigation services if you wish to make a challenge to a Will or wish to defend a Will.

#### Our Lawyers



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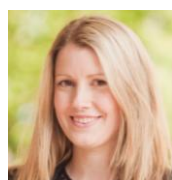
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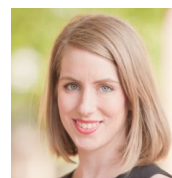
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Worrall Lawyers regularly conduct free Family Law Information Sessions.

The sessions are aimed at providing an insight into the various considerations that parties confront in relation to financial and child related matters at the end of their marriage or de facto relationship. Sessions are also focused on using family law as an estate planning tool through appropriate agreements when marriages and relationships are in a sound condition.

By request we can focus on particular problems. For example:

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- property disputes in family law;
- family trusts in family law; and
- superannuation in family law.

For further information about our information sessions or to book your place at a session please telephone us on **(03) 6223 8899**.



**Trevor McKenna**  
Senior Associate  
Family Lawyer

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- Agreements, Negotiations & the Family Law Courts

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