

Article Information

Authors: Donna Bengé, Rod Jones

Service: Estate & Succession Planning

Sector: Private Clients

Will claims - Queensland widens de facto relationship dependency claims

Recent decisions of both the Supreme Court of Queensland and the Supreme Court of South Australia have provided different views upon the question of dependency within de facto or domestic partner relationships.

Recent decisions of both the Supreme Court of Queensland and the Supreme Court of South Australia have provided different views upon the question of dependency within de facto or domestic partner relationships. In Queensland this has also been affected by recent legislative changes that will widen the class of potential claimants against the wills and estates of their existing or former domestic partners. This may be contrasted with a recent decision of the Supreme Court of South Australia which took a more restrictive view of dependency. In this edition of Wills Watch we consider those developments.

Snodgrass v Estate of McLaren [2017] QSC 132 (12 June 2017)

The Queensland Supreme Court was asked to consider an application to strike out a former de facto partner's application for further provision from the deceased's estate.

The executor of the estate (being the deceased's father) sought to have the claim by the deceased's former de facto partner (the Respondent in this case) dismissed on the basis that she was not "wholly or sustainably maintained by the deceased at the date of his death."

The Respondent and the deceased had a 4 year old son together but had been separated for about a year prior to the deceased's death. Arrangements were in place to share the care and financial responsibility of their son on a 50/50 basis.

The Respondent stated that she was entitled to make a claim against the estate as she met the definition of "dependant" under section 40 of the Succession Act 1981 (Qld). The Respondent argued that she was supported by the deceased and that as a consequence of the deceased's death she now had a greater financial burden, escalated by the fact that she may have to cease working to care for their son.

The Respondent had previously sought legal advice to pursue a property claim against the deceased under the Family Law Act, however as no application was filed at the deceased's date of death the right to any property settlement expired.

Pursuant to the Will of the deceased, the deceased left a life interest in his residential property to the Respondent and the balance of his estate was to be held in trust for his son until he attained 25 years of age. The terms of the Will allowed for distributions to be made to the son for his education and maintenance prior to him attaining the age of 25.

Irrespective of these terms, the Respondent argued she was entitled to additional provision because the deceased supported her with the costs and responsibility of caring for their son during his lifetime and that she was reliant on such support.

In this case, the Court was not asked to determine the outcome of the Respondent's application for provision but rather to decide if there was merit in her claim and if it was reasonable for her application to proceed to trial.

When considering whether the Respondent's claim did have merit, the Court questioned whether it was appropriate to take into account past events and future probabilities when assessing whether the deceased supported the Respondent.

The Court considered other cases which recognised the notion that support did include indirect support and not just financial dependency. It was considered that there may be merit in an argument where it was reasonable for the parties to assume that such support would continue in the future and where the loss of such support resulted in financial hardship.

The Court took the view that a wider approach should be taken and the application should not be dismissed. The Respondent was free to pursue her claim for further provision from the estate of the deceased.

This is yet another case in which the Courts have taken a broad approach to the meaning of dependency and support. The class of individuals and circumstances in which individuals may make a claim against an estate for further provision again appears to be expanding.

Note Bene: On 5 June 2017 amendments to the Qld Succession Act came into effect that put de facto spouses and de facto stepchildren on the same footing as married spouses and stepchildren.