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Deceased estate with no assets held liable to $975,000 challenge 20 years after willmaker's death

By Keeli Cambourne, deputy editor SMSF Adviser and Matthew Burgess, Director, View Legal

1 Matthew Burgess, director of View Legal, told SMSF Adviser the decision in Pronesti v Napoli (No 2) [2026] NSWSC 856 dealt with an "aggrieved applicant" who had around $3 million in assets (although was yet to reach a property settlement with his former wife) who was awarded $975,000.

2 "This was despite several factors including not learning that the deceased was perhaps his biological father until some 20 years after the willmaker's death and the fact that the estate of the deceased had no assets (due to all relevant assets, of at least $28 million in value) being owned by the deceased and his wife (who survived him) as joint tenants," Burgess said.

3 "As well, there was no conclusive evidence of the deceased being the aggrieved beneficiary's father (it had been assumed that the deceased was the uncle of the claimant)."

4 The tragedy in this case, Burgess said, was that the deceased was alleged to have raped the aggrieved beneficiary's mother, with DNA tests proving that the father of the siblings of the aggrieved beneficiary was different.

5 "The other known children of the deceased refused to complete DNA tests, a factor the court held to be important in supporting the aggrieved beneficiary's claim," he said.

6 "The court also confirmed that in cases of 'bare paternity', even if a deceased never even knew of the existence of a child, if that child has a strong case on the other factors such as needs, size of estate and lack of competing claims, a court can find that a child was left without adequate provision for proper maintenance (see Harris v Carter [2020] NSWSC 196 and Nicholls v Hall [2007] NSWCA 365."

7 He continued that, with this in mind, the court found several factors it considered were not detrimental to the application, including that the deceased had not openly acknowledged the claimant as his child and had always treated him as his nephew.

8 "It also said it was not detrimental to the case that the claimant was not raised by the deceased, that there had been no ongoing support, no close relationship and that no parent-child bond had developed during the deceased's life" Burgess said.

9 "[However, the court said] the DNA test results of the deceased's other children (who refused to be tested without explanation) would have assisted in its determination of the issue of the claimant's parentage and thus the court inferred that the refusal was evidence of the fact that completing the DNA tests would have been unhelpful to the case of the estate in defending the claim of the aggrieved beneficiary (see G v H [1994] HCA 48)."

10 In its decision, the court also referenced the rules that apply in relation to "large estates", Burgess said, noting that while there is no precise definition of what constitutes a "large estate", it said "a large estate" is once the net size exceeds about $5 million, which still holds when the estate is valued at $14 million with extremely large estates being those that exceed this amount.

11 "The importance of the estate being a 'large estate' is that for the purposes of making the evaluative assessment of a claim, the size of the estate is invariably a material factor, however in large estates the financial needs and competition for their satisfaction out of the estate often are essentially absent," Burgess said.

12 "It is a fact that Australians have freedom to leave their property by their will as they wish with one exception – that a person must fulfil any moral duty to make proper and adequate provision for those whom the community would expect such provision to be made before they can leave money as they wish.

13 "In these cases, one does not ask if the will is fair, one does not ask if the willmaker divided their property equally, one does not as a judge ask how would I have made a will had I been the willmaker. What must be asked is did the willmaker fail in the moral duty to those who have a claim on the estate.

14 "Even if the court comes to the view that the question should be answered in the affirmative, the court still does not remake the will, but only alters it to the extent adequate provision is made for the eligible person in respect of whom the willmaker failed in their moral duty (see Taylor v Farrugia [2009] NSWSC 801 and Stewart v McDougall (New South Wales Supreme Court, Young J, 19 November 1987, unreported))."

15 Burgess added that although the claim on the estate was being made 20 years after the willmaker's death, the decision to allow an extension of time to challenge an estate was made because the guiding principle is simply whether "sufficient cause (has) been shown".

16 "There are no statutory criteria that must be taken into account and there are no rigid rules in regard to the exercise of the discretion (see Thomas v Pickering; Byrne v Pickering [2011] NSWSC 572). Here, in granting the extension some 20 years after the deceased's death, the court considered a number of factors," he said.

17 "These included that the aggrieved beneficiary did not know the alleged facts concerning his parentage until 2023, that he acted relatively quickly once he became aware of them and obtained DNA evidence. He also experienced medical complications, including surgery, during the relevant period and was required to change solicitors due to issues concerning legal representation."

18 He continued that in making an assessment of whether, in all the circumstances, the provision made was inadequate for the proper level of maintenance, education, or advancement in the claimant's life, the court had to have regard to the applicant's financial position, the size and nature of the deceased's estate.

19 It also took into account the totality of the relationship between the applicant and the deceased, and the relationship between the deceased and other persons who had legitimate claims on the estate.

20 "Weight was given to evidence that the aggrieved beneficiary had annual taxable income of only $22,000 negligible savings and superannuation, significant mental health challenges, ongoing financial insecurity, and an ongoing and acrimonious marital separation," Burgess said.

21 "While there were no assets in the estate which outside NSW, would have represented the end of the matter, the NSW notional estate regime treated the deceased's failure to sever a joint tenancy as constituting a 'prescribed transaction' because the deceased could have elected to sever the joint tenancy to ensure assets passed into the estate and omitted to do so.

22 “The relevant property, while at law passing outside the estate could however still become available to satisfy a family provision claim under the NSW notional estate rules. This was despite the fact that the deceased’s wife had sold the relevant properties by the time of the proceedings, with the funds held in a bank account.

23 “Given the court’s view that any notional estate order would have a ‘negligible effect on the estate’, an award of $975,000, which was less than 3.5 per cent of the available property under the notional estate rules was held to be appropriate.”