



Recent Cases

Please see below some recent cases involving Wills and Estate Litigation.

Supreme Court Victoria, *Estrella v McDonald & Ors* [2012] VSC 62

In *Estrella v McDonald & Ors* the deceased by his Will dated 13 September 2005 appointed his two daughters as executors and divided his estate into four equal shares. The deceased gave each daughter a one quarter share of his estate. The other two shares were to be held on trust for his two sons during their lifetimes, and thereafter, to his six grandchildren that survived him. The estate was valued at \$2,501,049.

The Plaintiff challenged the Will and claimed that the deceased had a moral responsibility to make provision for him under his Will. The Plaintiff claimed that he had been the deceased's same sex de facto or domestic partner since moving from the Philippines to Australia in 1985 until the deceased's death. The Plaintiff sought the sum of \$900,000.00 on the basis that he was in the same position as a second spouse, notwithstanding that since 1996 he had worked away from Melbourne and not lived with the deceased.

The Defendants (the deceased's children) did not dispute the claim that the Plaintiff resided with the deceased between 1985 and 1996. However, the Defendants asserted that during this period that the Plaintiff was merely a lodger or boarder and was not required to pay rent as he carried out domestic services of the deceased. The Defendants claim the Plaintiff and the deceased's relationship was one of mere friendship or convenience and as such, that the deceased had no responsibility to make provision for the Plaintiff under his Will.

Much of the evidence in case was not contradictory, as the Plaintiff conceded that the defacto or domestic relationship he claimed was concealed from the deceased's family. The Court did not accept the Plaintiff's argument that at the time of the deceased's death he was his domestic partner. Although the Court did find that in the past the Plaintiff and the deceased were domestic partners and that both intended to resume that form of relationship.

On this basis the Court concluded that the Plaintiff established that the deceased had a responsibility to make provision for him.

The Court ordered that the Plaintiff receive the sum of \$300,000.

Supreme Court of Victoria, *Vogdanos v Kriaris* [2012] VSC 248

In *Vogdanos v Kriaris* [2012] VSC 248 the Plaintiff made an application for an extension of time within which he could commence an application seeking further provision for his proper maintenance and support from the estate of his late father. The estate was valued at \$502,007.02 and the grant of probate deceased's will was granted to the defendant on 8 August 2011.

Previously the Plaintiff was involved in a motor bike accident and as a result suffered significant injuries. As a result of his permanent injuries, the plaintiff is on a disability pension of \$630 per fortnight and has no capacity for employment.

Under the deceased's Will the residuary of the estate was evenly distributed between the Plaintiff and his two sisters. The Plaintiff believed that his sisters are generally well off and that they each own property and motor vehicles.

The Plaintiff was never provided a copy of his father's and it was not until he attended at the office of the executor's solicitors on 19 April 2012, that he was aware of the terms of the Will. The six month time period for which the Plaintiff could make his application expired on 10 April 2012. The Plaintiff only became aware of his rights to make a claim for further provision on 20 April 2012 when he consulted his solicitors. The Plaintiff was advised that he had a strong claim because of his impecuniosity, his health along with his care and affection of his father throughout the whole of his life, in particular, during the latter stages of his father's life, when his father was ill.

When the plaintiff became aware of his rights to make a claim for further provision on 20 April 2012 he acted quickly and contacted the Defendant's solicitors that same day.

The Court:

- accepted the Plaintiff's evidence regarding the circumstances leading to the application;
- found that there had not been an excessive delay in the Plaintiff making the application;
- also found that if the application was granted, that no party would be prejudiced; and
- held that the Plaintiff established that he had an arguable case (not a hopeless case) in relation to his claim.

The Court ordered that the extension of time be granted.