

Article Information

Authors: Donna Benge, Rod Jones

Service: Estate & Succession Planning

Sector: Private Clients

Will claims - South Australia comments on what is not a close domestic relationship

The South Australian Supreme Court has considered whether a plaintiff is a domestic partner under the relevant legislation, notwithstanding that the length of the plaintiff's relationship with the deceased was less than the prescribed period.

The South Australian Supreme Court has considered whether a plaintiff is a domestic partner under the relevant legislation, notwithstanding that the length of the plaintiff's relationship with the deceased was less than the prescribed period.

The first and second plaintiffs were two of the deceased's three adopted children and applied for provision out of the estate of the deceased. The third plaintiff sought to be joined in those proceedings on the basis that she had been the domestic partner of the deceased and sought a declaration that she was the domestic partner of the deceased within the meaning of s11 of the Family Relationships Act 1975 (Act).

It was an agreed fact that the third plaintiff and the deceased had not been in a relationship for three years, or the aggregate of three years over a four year period so as to meet the definition of "*domestic partner*" under the Act. The relationship was in fact for a period of 18 months.

The third plaintiff however relied on the second limb of the legislation. This second limb provides for status as a domestic partner if it could be proved that the third plaintiff and deceased were "*living together in a close personal relationship*" and it would be "*in the interests of justice*" for the declaration to be made pursuant to the Act.

Her Honour Judge Bochner dismissed the application as she was not satisfied, on the balance of probabilities, that the deceased and the third plaintiff were living together in a close personal relationship.

Whilst the Court accepted that the third plaintiff was in a romantic relationship with the deceased and that they spent a significant amount of time together, even discussing marriage, it held that "*the mere fact of a relationship is not sufficient*" and the relevant limbs of the Act were not met.

The Court was not persuaded that the interests of justice required a declaration of domestic partnership, stating that the answer to the question of what is in the interests of justice depends on the circumstances of the case. It found that the third plaintiff "*made very little alteration to her life after the commencement of the relationship, and indeed, made no changes to her life, or contributions to the deceased's life such as would require the declaration to be made in the interests of justice*".

Although this second limb in the legislation provides an opportunity for a more expansive approach to the test for a domestic partner declaration, this case reflects that the Courts will not allow it to be used as a mere stepping stone to skirt around the first important requirement, being the length of the relationship.