

## Article Information

Authors: Donna Benge, Rod Jones

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## Charities: To defend or not to defend?

**The District Court of Queensland has recently considered the question of whether a father failed to make adequate provision in his Will for his two adult children.**

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**Partners Donna Benge and Rod Jones, and Associate Christina Flourentzou** discuss the case further.

Keith Arthur Wright (Keith) died on 24 February 2013 aged 73 years old.

Pursuant to Keith's last Will, he divided his estate in the following proportions:

- the proceeds from his pension benefit, worth approximately \$630,000 to the Royal Children's Hospital Foundation Queensland (Children's Hospital); and
- the balance of his estate, worth approximately \$1.1m equally between his siblings Trevor John Wright (Trevor) and Lynette Elizabeth Roberts (Lynette).

Keith was survived by his two adult children Cassandra Wright (Cassandra) and Peter Wright (Peter). On 18 September 2013, Cassandra commenced proceedings in the Queensland District Court seeking provision from Keith's estate. Not long after, Peter also issued an application to be joined to the proceedings also seeking provision from the estate.

Cassandra and Peter gave evidence that throughout their early childhood, Keith was never home because he was in the Navy. They also said that when Keith separated from their mother they stayed with their mother and Keith failed to maintain contact with them.

Cassandra told the Court that she had made at least one attempt to contact her father in more recent times by posting him a letter with some photographs. However, she said that she did not receive a response nor was the letter ever returned to sender. Peter on the other hand, said that he had not attempted to make any contact with their father.

At the time of the trial Cassandra was:

- 47 years old;
- she lived with her mother;
- earned \$951.00 per week;
- had \$12,000 in savings;
- a car worth \$13,000; and
- superannuation entitlements of \$110,000.

She did not own any property and she suffered from various psychological conditions.

Peter's position was much the same. He was:

- 50 years old;
- causally employed in the metal roofing industry;
- earned approximately \$1,100 per week;
- had a car worth approximately \$4,000 but was still under finance in the amount of \$5,000;

- had approximately \$800 in the bank; and
- a superannuation balance of approximately \$56,000.

Although Peter was in good health, he also had a liability of \$49,568.24 for unpaid child support payments.

The Court accepted that both Trevor and Lynette had a close and loving relationship with their brother. However, they each owned their own home, had their own savings and received a reasonable income on which to live. The Court also noted that Trevor suffered from several health issues.

The Children's Hospital provided evidence of its programs and activities. However, it did not provide any evidence of any connection that it may have had with Keith. They also chose not to take an active role in the proceedings.

After careful consideration of all of the evidence, the Court concluded that the deceased had failed to make adequate provision for Peter and Cassandra and ordered that Cassandra was to receive a legacy \$400,000 and Peter was to receive a legacy of \$350,000 from Keith's estate. In reaching that decision the Court said:

*"Those amounts are designed not to allow the purchase of a home and the clearance of all debts, but to provide sufficient equity for each to borrow the balance to purchase a modest property while keeping an amount aside for contingencies".*

After payment of Cassandra and Peter's legacies, the remainder of the estate was then to be distributed in the same proportions as stipulated in Keith's Will. This meant that the Children's Hospital share was reduced to \$380,000 and Trevor and Lynette's share was reduced from \$581,000 to \$360,000.

The Court then made a passing comment that it was minded to order that the costs of the litigation, which were over \$230,000, be paid solely from the Children's Hospital share of the estate. This would have meant that the Children's Hospital share would have been further reduced from \$380,000 to approximately \$150,000. However, before making those orders, the Judge was prepared to hear from the Children's Hospital on that point.

Counsel for the Children's Hospital submitted that it may be inferred that at the time that Keith made his Will, he intended the Children's Hospital to benefit more than anyone else.

After careful consideration of the Children's Hospital's submissions, Judge Devereaux said:

*"I would have thought that where a charity has such a large bequest at stake it would take particular interest in pursuing and preserving the bequest. In the end, I am persuaded to move from my original consideration...In all the circumstances, the appropriate order is that the costs of the proceedings should be borne rateably amount all three beneficiaries".* The overall outcome of this case could have been fundamentally different if the Children's Hospital had taken an active role in the proceedings and provided the court with evidence of a relationship that it had established and maintained with Keith.

Accordingly, the case highlights the importance of not for profit organisations needing to keep good records of their relationships with their donors and the importance of needing to seek legal advice at an early stage of defending a bequest.