Article Information

Team: Piper Alderman
Service: Estate & Succession Planning
Sector: Private Clients

Miners daughter

Perth mining billionaire, Michael John Maynard Wright (the deceased) died on 26 April 2012 aged 74.

Perth mining billionaire, Michael John Maynard Wright (the deceased) died on 26 April 2012 aged 74. The deceased was survived by his wife of 15 years, three adult children by an earlier marriage (including the second and third defendants) and his daughter Olivia Jaqueline Mead (the plaintiff). The deceased's estate was estimated to be valued in excess of $1 billion.

The plaintiff was born on 3 September 1995 of a relationship between the deceased and Elizabeth Mead. They had never married. The plaintiff did not have a close relationship with the deceased. During her childhood she had only sporadic contact with the deceased, he did not appear to take much interest in her welfare and he provided little material support to the plaintiff or her mother.

During his lifetime the deceased made many Wills and codicils. His last Will dated 6 March 2012 was altered by a codicil dated 11 March 2012 (the Will). Probate of the Will was granted to the first defendant on 10 July 2012. The first defendant was the executor named in the Will and had been the solicitor of the deceased for many years.

The Will provided for a number of specific bequests. For instance, specific amounts were provided for the deceased's wife and his son Myles. The second and third defendants were the residuary beneficiaries and their entitlements were in the order of $400 million each. The plaintiff's entitlement under the Will was found in clause 6A(c)(i)(E).

The Olivia Trust No 2 (the Trust) was established by the deceased on 18 April 2008 for the benefit of the plaintiff. The Will provided for five annual payments to be made the Trust to increase the trust fund up to a maximum amount of $3 million in cash and/or property. However, the terms of the Trust were such that the plaintiff had no control over the Trust or how the income or capital were distributed until she attained 30 years old. Until such time, the trustee, being the first defendant, had an absolute discretion with respect to the income and capital of the Trust. There were also numerous conditions that could see the plaintiff excluded as a beneficiary, for example, if she were involved in any non-traditional faith.

The plaintiff made an application pursuant to the *Family Provision Act 1972* (WA) (the Act) asserting that she had not been left with adequate provision by the deceased.

Principles

The plaintiff, as a daughter of the deceased was an eligible person under the Act and was entitled to maintain her action pursuant to s7(c) of the Act.

Master Sanderson noted that in exercising the Court's discretion, what is "adequate" depends on the circumstances of the case including:

- the size of the estate
- the nature of the relationship between the claimant and the deceased
- the claimant's present circumstances
- other legitimate claims.

However, this case was unique. The Court found that the size of the estate was so great that its value was irrelevant in determining the outcome. No other individual would be prejudiced by any award the judge could have made (within

reason).

Master Sanderson was satisfied that the Will of the deceased did not make adequate provision for the plaintiff. The starting point for reaching that conclusion was the size of the estate. That combined with the "uncertainty surrounding the interaction between the deceased's Will and the Trust taken together with the terms of the Trust itself" persuaded the court that adequate provision had not been made in the circumstances.

The Court found that the Trust operated in an "entirely oppressive fashion" and there was a real prospect the plaintiff could receive nothing. Master Sanderson noted that this decision was not about "fairness", nor about compensating the plaintiff for the deceased's "limitations as a father".

Master Sanderson stated that there are two approaches which are prominent in the authorities on the 'moral duty' of a testator to those entitled to expect to benefit from his estate. These approaches are that of what a wise and just testator would do in the position of the deceased and the community expectation test. On both approaches Master Sanders was satisfied that an award of $25 million should be made.

Outcome

In the circumstances, the plaintiff was awarded a lump sum of $25 million from the residue of the estate on the condition that she relinquished any right or interest in the Trust.

For further information, please contact Donna Benge or Rod Jones.