

Article Information

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Til death do us right apart

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Mrs Shantha Alagiah and Dr Ratnam Alagiah (deceased) were married for 22 years and they did not have any children. On 29 May 2006 they separated and on 25 May 2012 their divorce was finalised.

At the time of their divorce, Mrs Alagiah's solicitor was attempting to reach a property settlement with Dr Alagiah and it was clear that Dr Alagiah owned property in Malaysia, South Australia, Queensland and New South Wales. He also had superannuation entitlements. Family Court proceedings were not issued because Mrs Alagiah's lawyer was trying to reach an out of Court agreement with Dr Alagiah.

On 21 January 2013, Dr Alagiah died whilst holidaying in Canada.

At his death however, the property settlement with Mrs Alagiah had not been finalised and Dr Alagiah died without a valid Will. Due to the unexpected death of Dr Alagiah, Mrs Alagiah had limited options available to her to obtain a share of the matrimonial assets and her only option was to file a claim against Dr Alagiah's estate seeking family provision.

The Court appointed Mr Crouch as the administrator of Dr Alagiah's estate and on 11 July 2014 letters of administration were granted to Mr Crouch. This meant that Mrs Alagiah had until 21 October 2013 to institute proceedings for an inheritance family provision claim but proceedings were not issued in time.

On 26 March 2015, Mrs Alagiah filed proceedings seeking an extension of time to bring an application for family provision against Dr Alagiah's estate. Counsel for Dr Alagiah's estate opposed her application for an extension of time.

Mrs Alagiah was able to demonstrate to the Court that following her separation from Dr Alagiah, she resided in India where she was caring for her ill mother. After her mother's death on 12 April 2014, she lost her only source of income and suffered extreme financial hardship. She was unemployed, unable to afford to return from India to Australia and did not have "reliable or timely access to telephone and internet service" which made timely contact with her solicitors difficult.

The Court was satisfied that Mrs Alagiah had an adequate explanation for the delay in issuing her claim. However, the main question that the Court needed to consider was whether Mrs Alagiah (having become divorced) was a person entitled to make an application for family provision from Dr Alagiah's estate under the *Succession Act 1981* (QLD) (the Act).

The Act provides that a spouse of a deceased can make an application for family provision. A 'spouse' includes a former husband or wife who was dependent upon the deceased.

A former husband or wife who was dependent upon the deceased is then further defined to mean:

- a person who is divorced from the deceased
- has not remarried or entered into registered relationship before the deceased's death
- was on the deceased's death receiving, or entitled to receive, maintenance from the deceased.

The Court noted that it was clear that Mrs Alagiah and Dr Alagiah were divorced at the time of his death, that Mrs Alagiah

had not remarried or entered into another relationship before Dr Alagiah death and Mrs Alagiah was not receiving maintenance from Dr Alagiah.

The question the Court considered was whether Mrs Alagiah was *entitled to receive maintenance* from Dr Alagiah.

After very careful consideration, the Court concluded that in order for Mrs Alagiah to have been entitled to receive provision from the estate she must have had at the date of Dr Alagiah's death "*an actually crystallized right*" to payment of maintenance, such as a right under an existing agreement.

Therefore, unfortunately for Mrs Alagiah, the Court found that she was not a dependant former spouse as required by the Act and she was not entitled to bring an action for family provision. The Court had no other option but to refuse her application.

Although this was a tough decision for Mrs Alagiah, it reflects the current status of the law in Queensland. If Mrs Alagiah had been able to make her application in a different State, such as South Australia, she would have been considered to be an eligible applicant. When it comes to the family provision legislation, it is important to be aware that each State and Territory has their own legislation, which should be carefully reviewed when considering a potential claim.