Article Information

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Suspicious Minds

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*In a recent New South Wales case, two children of the deceased opposed a grant of probate on the basis that they alleged it to have been executed in "suspicious circumstances". **Partner, Rod Jones** and **Associate, Christina Flourentzou** examine.*
Re Estate Beeby; Beeby v Eggers [2015] NSWSC 1466 (7 October 2015)

Mrs Veta Beeby died at Gosford on 22 February 2012, aged 90 years old.

Her estate was worth an estimated $1 million dollars. Mrs Beeby and her late husband, Mr Charles Beeby, had 11 children. Three of Mrs Beeby's children had predeceased her.

During Mrs Beeby's lifetime she executed three wills, her last Will being dated 30 December 2008 (2008 Will).

The 2008 Will, was prepared from a homemade "Will Kit". In the 2008 Will, Mrs Beeby appointed two of her children, John and Pauline, to be the executors of her estate. She then gave each of them a gift of $220,000 and then directed that the rest of her estate was to be divided equally between her other surviving children and the children of her predeceased children.

After Mrs Beeby's death, John and Pauline applied for a grant of probate in order to finalise Mrs Beeby's estate. However, two of Mrs Beeby's other children, Julie and Charles, opposed the application. Julie and Charles alleged that the preparation and execution of the 2008 Will was attended by *"suspicious circumstances"*. Interestingly, they did not allege undue influence, fraud or forgery.

The Court heard that the 2008 Will was written by Pauline at the direction of Mrs Beeby and it was executed in Mrs Beeby's home in the presence of two witnesses. One witness was Pauline's neighbour and the other was Pauline's friend. Furthermore, John and Pauline were also present when the 2008 Will was signed.

Based on those facts and the terms of the 2008 Will, the Court formed the view that the 2008 Will was, objectively, attended by *"suspicious circumstances"* which, *"reinforced the need for a critical assessment of the deceased's testamentary capacity and her knowledge and approval of the Will"*.

At the time of the making of the 2008 Will, Mrs Beeby was in poor health and she lived with and was cared for by John and Pauline. Mrs Beeby's general practitioner was able to give evidence that around the time of the making of the 2008 Will, she was *"clearly capable of understanding the process of making a will, and all that entailed, and she was not incapacitated by dementia or any other condition that would have rendered her unable to make a Will"*.

John and Pauline both gave evidence that the deceased had read the 2008 Will before signing it and both witnesses told the Court that Mrs Beeby was talkative and coherent at the time of signing the 2008 Will. It appears from the judgment that the Court found Pauline to be a credible witness.

The Court formed the opinion that Mrs Beeby was a feisty, independent minded woman and in the context of her relationship with John and Pauline it was hardly surprising that she turned to them for their assistance with the preparation of her Will. Furthermore, the Court was satisfied that because John and Pauline had cared for Mrs Beeby and

she had lived with them for many years there was nothing untoward Mrs Beeby's preferential treatment towards them in the 2008 Will.

The Court made an order that the 2008 Will was found to be valid and accordingly probate of the 2008 Will was granted to John and Pauline.

In the judgment, the Court made an interesting point. It said *"there was nothing sinister in a Will being made without recourse to the legal advice. This was a self-reliant, matriarchal family, not given to formalities not perceived by them to be necessary. Legal advice was not sought, obtained or thought necessary."*

However, the Judgment then went on to say that *"the whole family might well have been better placed in the long run had the deceased made her Will with the benefit of a solicitor."*