

Recent Estate and TFM Outcomes

HOBART CPD DAY
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BARRISTER

Jones v Public Trustee as Executor of Estate of Mavis Pauline Jones and Jones [2025] TASSC 1

- **Facts:** Testatrix died in 2022 leaving a will that did not provide for her adult son Michael Jones, instead leaving it all to her other son Shane Jones.

The estate was worth \$538k, comprised mostly of a house at Goodwood worth \$530k. After liabilities the estate had a net worth of \$460k.

The Applicant was 62 at hearing, married, owned a home at Newtown worth \$750k with a small mortgage. He has \$10k in super and \$8k in savings. His income was \$65k per annum working fulltime. His expenses were about \$950-1050 per week.

The Applicant has had health problems since 2011, including atrial fibrillation and acute coronary syndrome. Following the death of the testator in 2022, the Applicant had stopped work due to illness and had relied on his super (then \$65k) to survive.

Disclosure

Daly AsJ was critical of the Applicant for failing to disclose his wife's financial circumstances.

Daly AsJ said: "That obligation extended to the circumstance of Hamish Jones living in the applicant's home "rent-free" while the applicant cannot cover his own weekly expenses: at [14].

→ You will need to disclose the circumstances of a spouse and potentially adult children living at home.

Competing Claim

The competing claim of Shane Jones is he was 57, and a disability pensioner with type 2 diabetes, chronic heart disease, severe back issues.

Shane lived with the Testatrix until she went into a home in 2022, he provided her with care and support while living with her.

Shane was financially dependent on his mother.

At [20]: This [financial dependence] is a significant element to Shane Jones' strong competing claim on the estate.

Jurisdictional Question and Quantum

Decided in favour of the Applicant.

At [22]: At [the date of death], a wise and just testatrix would have given close consideration to the fact that the applicant's health had worsened over the years and at that date had a significant impact on his present and future capacity to work and earn money. The applicant's wife's poor health at this time also should have raised reasonable concerns about her present and future capacity to financially contribute.

At [26]: My assessment of all the circumstances relevant to the question of the proper maintenance and support for the applicant is that the sum of \$100,000 amounts to adequate provision.

Barker v Cann [2025] TASSC 37

Facts:

Testatrix was the mother of the two Applicant sons, Brendan and Damien.

The estate was comprised of several properties, and the testatrix had run an AirBnB business with her de facto Husband Mr Cole.

Each son was given a gift of about \$132k from an estate of \$1.96m. This gift came from a one quarter share each of the residue. The testatrix left various other real property and chattels to her husband, younger son, and her sister.

Daly dismissed the TFM application.

The Percentage of the Gift is Irrelevant

[17]: ...I reject the applicants' submission that, having regard to the size of the estate, **the "small percentage... in and of itself" shows that the provision was inadequate.** No authority for such an approach was cited and to adopt it would be contrary to the statute and the principles which the Court must apply.

Adult sons were able to provide for themselves

[43]: I find that each applicant is able to maintain and support himself and his dependents. I also find that each applicant is established in a stable marriage and stable in his employment. Neither applicant gave evidence that they struggle to adequately provide for their dependents from their available resources. The applicants did not claim that they contributed to building up the testatrix's estate. Nor was either of them in any way dependent upon the testatrix at the date of her death. Neither applicant gave evidence that he had any expectation that he would receive a share of the testatrix's estate or that he acted upon any such expectation. Neither applicant gave evidence of any problems associated with poor health, nor that he has any reasonable apprehension of such problems. Each applicant has been in full time employment since leaving school and both applicants are skilled and capable men.

Buffer against unknown future contingencies

At [51]: The evidence relating to the degree of future need of each applicant did not provide detailed estimates of the reasonably anticipated future expenses involved in the future care for children and what impact that might have on the current or anticipated financial position of either applicant. However, the **jurisdiction under the Act is predicated on the adequacy – not simply the utility** – of the provision made under the will, having regard to all the circumstances.

The Applicants relied on a series of interstate cases, which Daly distinguished: at [57].

At [59]: The flaw in this aspect of the applicants' case is that they **have not established that they have needs which they cannot meet from their existing resources.**

Relevant principles

[63] Counsel for the respondent put the following propositions, which are accepted:

(a) Generally, **the community does not expect a parent to look after a child for the rest of the child's life**: *Chapman v Ingold* [2015] NSWSC 1604 at [115].

(b) Mr Cole's relationship with the testatrix was a loving one, involving joint contribution to the operation of the testatrix's Airbnb business and he helped the testatrix build up her estate.

(c) The applicants' submissions suggest that the Court should take an approach equivalent to fairness, rather than what was adequate and proper provision: *Steinmetz v Shannon* [2019] NSWCA 114; [2019] 99 NSWLR 687 at [95] per Brereton JA. There, Brereton JA stated:

"It may readily be accepted that the legislation does not authorise a redistribution of an estate according to indeterminate and unreliable concepts such as 'fairness or equality', and that it authorises interference only to the extent of making adequate provision for proper maintenance, education and advancement in life."

(d) The facts permit the Court to conclude that the testatrix saw that each of the applicants was making his way well in the world. Further, that she had one son, Aaron, who was not doing as well as the applicants were, together with her spouse who was not anywhere near as young as the applicants.

(e) The testatrix had a duty to Mr Cole as his spouse: see *Lord v Lord* [2003] TASSC 99, at [9], Cox CJ referring to *Golosky v Golosky* [1993] NSWCA 111, page 10 at line 25.

Relevant principles

[67] The Act does not permit the Court to effect a redistribution of an estate in order to satisfy notions of familial generosity.

This is the case even if an applicant has few resources and the competing claim is by a person who is relatively well off

Piscioneri v Whitehouse, Piscioneri and Gates [2025] TASSC 8

Testatrix made a will in 2019, bequeathing \$10k to each of her 15 grandchildren, and the remainder to her 6 children in equal parts.

One of the adult children (the plaintiff) challenged the final will.

The plaintiff alleged undue influence, and lack of testamentary capacity.

This case was ultimately dismissed due to a total lack of evidence for undue influence, and lack of testamentary capacity.

At [26]: the testatrix knew what she was doing and had the testamentary capacity to make her April 2018 will and codicils and to make her May 2019 will

Principles relating to capacity

At [25], Daly AsJ stated:

As Cavanough J said in *Haberfield and Ors v Larsson* [2023] VSC 161 at [21]:

"Once the proponent establishes a prima facie case of sound mind, memory and understanding with reference to the particular will, for capacity may be either absolute or relative, then the onus probandi lies upon the party impeaching the will to show that it ought not to be admitted to proof.

...

To displace a prima facie case of capacity and due execution mere proof of serious illness is not sufficient; there must be clear evidence that undue influence was in fact exercised, or that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his property."

Principles continued, and Costs

Having regard to the evidence in this case, Daly AsJ ruled that there was no doubt in his mind that the testatrix knew what she was doing and had the testamentary capacity to make her 2018 will and its codicils, as well as the will of May 2019.

It was erroneous to suggest that the testatrix could not read or see the will or that she did not understand its contents [at 26].

Indemnity costs were awarded against the Plaintiff: *Piscioneri v Whitehouse, Piscioneri and Gates (No 2)* [2025] TASSC 13

[9] An order for indemnity costs against the plaintiff is justified because of the special and unusual feature of the plaintiff's action being that she raised a series of totally unmeritorious claims (including allegations of fraud) against the validity of the 2019 will, the 2018 will and its codicils, which were without any prospect of success, and which were wholly unsupported by any evidence of any probative value, or any evidence at all.

*4 days of hearing time, plus written submissions were required for this case.

Muhl v Bailey [2025] TASSC 24 (per Pearce J)

Successful TFM application by an adopted daughter against the estate of her late stepmother.

There was a net estate of \$481k.

The Testatrix made no provision for the Applicant, but did make provision for her siblings.

The Applicant was a 69 year old divorced lady, with 3 adult children, she had \$452k in super at the time of hearing, she owned her home which may have had a value of between \$1.5m-\$1.9m. She owned a 1974 BMW valued at \$17k.

In 2024 her living expenses were \$71,920.49. She said she needed to undertake substantial repairs to her home, including replacement of the pool fence.

She was in reasonable health, albeit needing to spend \$25,000 on dental work.

There was actuarial evidence that you need \$51,630 per annum for a comfortable retirement.

Adequate provision?

Pearce J said that despite the Applicant not being dependent on the Testatrix, nor being destitute or in any need of urgent financial assistance, she was left without adequate provision for her proper maintenance and support.
[41]

The Respondent criticised the Applicant for a lack of disclosure including [42]:

- adduced insufficient evidence about the value of her home;
- did not accurately represent the amount of her superannuation fund at the date of the death of the testator by failing to disclose the likely increase to the value resulting from her family property settlement;
- offered no corroboration of the values of her accounts, superannuation and the amount due to her under the settlement, and was generally imprecise about values;
- adduced insufficient evidence about the need for and costs of repairs and renovations to her home;
- failed to adequately explain her expenditure during the financial years ended 2023 and 2024 or account for the source of the funds, suggesting that either she has an undeclared source of income or her savings must have been substantially higher than she deposed.

Priority of Children of first marriages

[45] ...

I agree with the observations of Nettle J in *McKenzie v Topp*^[21]:

"Other things being equal, right thinking members of society are likely to accept that the needs of the widow of a second marriage should rank in priority ahead of the claims of the children of a first marriage; although of course it is always a question of fact. But equally, upon the death of the widow, and as it were in the event of a surplus, most would surely say that the children of the first marriage should rank for their fair share. For once the widow is gone, and therefore no longer in need of provision, her needs no longer warrant that the children rank behind her or thus her chosen successors.

Of course that is to speak in terms of broad generality and upon the assumption not only of an estate of sufficient value to provide for the children of the first marriage but also of a need for their provision."

[46] ... Although Nita, during her life, did not assume any responsibility for the financial and emotional security of the applicant, the circumstances I have outlined imposed a moral duty upon her in favour of the applicant arising from the relationship between the applicant and her father, the absence of any provision for the applicant during the life of her mother and her father, the size and nature of the estate and the ability to provide for the applicant without affecting those beneficiaries with any competing moral claim.

Estrangement and family politics

The Applicant was the adopted daughter of the Testatrix's husband. She was the adopted daughter from his first marriage.

She did not like her step mother, and was “disgusted” when the step mother moved in with her father shortly following her mother's death in 1980. They had had little to do with each other.

[49] The respondent, correctly in my respectful view, conceded that there was nothing in the evidence regarding the applicant's relationship with her late father which would have the effect of lessening his moral obligation to the applicant under the Act. There was a long period of estrangement between the applicant and her father. However, estrangement or even hostility between a testator or testatrix and an applicant does not terminate the obligation of the testator or testatrix to provide for the applicant. Relationships may be complex and nuanced, and an overall view of the relationship between parent and child is to be considered and appraised in each case.

Premature Distribution

[54] The respondent fully distributed the estate before the expiration of the three month time limit for applications provided for by the Act, s 11.

Ultimately the Applicant received a payment of \$90,000.00