

2025

WILLS & ESTATES CPD SUPER DAY

SVENSON
BARRISTERS



SESSION 4:

'ANALYSIS OF PART IV CASES IN RELATION TO PROPER PROVISION FOR A SPOUSE'



**KAREN LE FAUCHEUR
BARRISTER & MEDIATOR**

OVERVIEW

- **Refresh on principles**
 - Luciano v Rosenblum (1985) 2 NSWLR 65, 69–70
- **Case analysis**
 - Thompson v Thompson [2015] VSC 706
 - Re Saric [2017] VSC 759, Re Saric (No 2) [2018] VSC 254; Saric v Vukasovic [2019] VSCA 57
 - Wilden v Meller [2023] VSC 119

What is proper provision?

- General principal:
 1. Secure Home
 2. Income sufficient to permit spouse to live in style to which accustomed
 3. Fund to meet unforeseen contingencies
 - Luciano v Rosenblum (1985) 2 NSWLR 65, 69–70, approved by Court of Appeal in Vukasovic [2019] VSCA 57 [32]
- Depends on all the facts and circumstances
- Balance against moral obligation owed to competing beneficiaries
- Elements are not necessarily mutually independent: Re Finnie; Petrovska v Morrison (No 2) [2021] VSC 153 (30 March 2021) [114]

'Crisp order'

- Name derived from the case *Crisp v Burns Philip Trustee Company Ltd* (NSWSC, 18 December 1979, unreported) and described by Ipp J in *Milillo v Konnecke* [2009] NSWCA 109
- Confers a 'portable life interest'
- Intended to provide flexibility to transition to appropriate accommodation, retirement village, nursing home, or hospital
- Preserves the estate for remainder beneficiaries

Thompson v Thompson

- *Thompson v Thompson [2015] VSC 706*
- Marriage over 25 years
- One apartment held as tenants in common between deceased and plaintiff
- Will provided a life interest plus \$15,000 pecuniary legacy, with residue to be divided equally between the deceased's adult children
- Estate value at trial: half interest in apartment plus net cash of around \$120,000
- Plaintiff sought absolute interest in deceased's share of apartment

Thompson v Thompson

- **Potential solutions in striking the balance [66]**
 - Crisp order
 - Pecuniary legacy, plus a Crisp order
 - Property sold, part of proceeds provided absolutely and balance to purchase alternative accommodation, in remainder that portion fall to residue
 - Property provided absolutely but subject to a charge to secure payment of all or part of proceeds of sale back to the estate on the earlier of death of plaintiff, or plaintiff selling property
 - Creating a fund to be held on trust to provide for plaintiff's accommodation, surplus capital invested with income for plaintiff, fund falling into residue on death of plaintiff
- **Court order:** a portable life interest in the apartment and the residue

Re Saric

- *Re Saric [2017] VSC 759, Re Saric (No 2) [2018] VSC 254; Saric v Vukasovic [2019] VSCA 57*
- Long marriage; separated from 2009 but living in family home
- At death plaintiff and deceased owned two properties, family home and encumbered unit
- No provision in Will for spouse and deceased had signed forms to change ownership structure to tenants in common
- Plaintiff sought absolute interest in deceased's share of the family home
- **Court order:** a portable life interest in the deceased share of [?]
- Which property?

Wilden v Meller

- *Wilden v Meller [2023] VSC 119*
- Marriage over 25 years and each had no children
- Lived in the property deceased had inherited from her mother
- Will provided a life interest in the property plus \$50,000 fund for repairs and maintenance. Balance of the estate was to deceased's nephew's and charities
- Plaintiff sought funds to purchase suitable property in Ivanhoe outright and some other amounts (around 75% of estate) leaving \$500,000 for beneficiaries.
- **Court order:** a portable life interest in the apartment and absolute interest in residue

Summary

- General principal:
 1. Secure Home
 2. Income sufficient to permit spouse to live in style to which accustomed
 3. Fund to meet unforeseen contingencies
- Depends on all the facts and circumstances
- Court will consider all the relevant s 91 and 91A factors
- Balance against moral obligation owed to competing beneficiaries
- Elements are not necessarily mutually independent
- Court will only order what is necessary



Questions/Discussion

Karen Le Faucheur

Barrister and Mediator (NMAS)

Ah Ket Chambers, 35.25 500 Bourke Street, Melbourne

Phone – (03) 9225 7333

Email – klefaucheur@vicbar.com.au

<https://www.linkedin.com/in/karen-le-faucheur/>