

Court challenges to wills more common



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LEGAL MATTERS

A recent court decision amended the will of a woman who had left her estate entirely to animal charities.

After a decade of litigation between the adult daughter of the deceased and the benefiting charities, the decision of the court was that, despite the express intention of the deceased in her will, one third of the estate be awarded to the daughter.

The court justified that change to the will because it found the mother's intentions

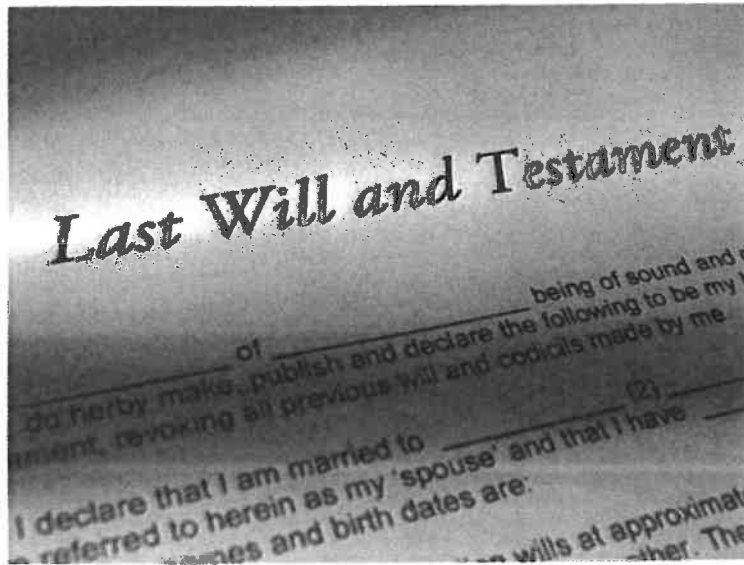
"unreasonable and capricious and harsh ... towards her child".

Of relevance, too, were the daughter's severely restricted means, and the fact she had children of her own. The court found the mother had failed to make reasonable financial provision for her adult daughter.

Challenging a will should not be seen as being greedy or not respecting the deceased's wishes.

Rather the law allows children (even when adults) and some other relations to challenge the will of a parent who has failed to adequately provide for them. It is up to the court to decide what the proper provision from the estate, for the claimant, should be.

Decisions of this kind are now



Adult children can challenge the will of a parent who has not adequately provided for them.

PHOTO: FAIRFAX

a standard part of New Zealand law.

Such challenges are governed by the Family Protection Act 1955.

The law allows the court to override a will and make provision in favour of a limited range of family members if a will has failed to provide for their proper maintenance and support.

Where the will maker has

failed to address that "moral duty", a will can be amended.

Where a child of the will maker has been omitted from the will, or only nominally provided for, the court is very likely to decide to exercise its powers to amend the will.

Also where the beneficiaries of the will are not related, or "remote" (such as in the case

above where benefiting charities had no real relationship to the will maker), the court is more inclined to override the will to sufficiently provide for a qualifying claimant. The circumstances of a claimant are relevant, but even if they are financially, physically and mentally well off, the court may revise the will if the will maker's

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"moral duties" to them have not been addressed.

The court considers moral duties beyond provision for financial need, but to include recognition of the child's general family "support" and "belonging".

If a person wishes to ensure the intention of their will is upheld, they need to turn their mind to their moral obligations when it is written. That does not necessarily mean all children must be provided for in a will, but if there is an intention to deny a child a benefit, a rational reason should be recorded, after full consideration of the will maker's moral duties.

It is important to obtain proper legal advice when making a will. Children (and in some circumstances other relations) can address their marginalisation, or omission, in the will of a parent, through recourse to the court.

Column courtesy of Rainey Collins Lawyers, phone 0800 733 484. If you have a legal inquiry you would like discussed, email alan.knowlesley@raineycollins.co.nz or go to raineycollins.co.nz.