



E-Alert: Claiming on a small estate? It could cost you

By Angela O'Neill, Associate

For many years now, the Courts have cautioned that parties engaging in protracted disputes over deceased estates of relatively small value should not assume success or that their legal costs will be paid out of the estate assets.

The recent decision of *Stojanovska v Stojanovski (No. 2)* [2019] QDC 198 follows the Court's previous stern warnings to the parties regarding costs in Family Provision Applications.

What is a Family Provision Application?

A Family Provision Application (or FPA) is a Court action in which a person seeks a benefit or greater benefit from the estate of a deceased person. FPAs may be made whether or not the deceased left a Will.

FPAs are only available to people who were, at the time of the deceased person's death, the deceased's spouse (including de facto spouse), a child or step-child of the deceased (regardless of age) or, financially dependent upon the deceased.

If a person falls into one of the above categories, they must also be able to show that the deceased has failed to adequately provide for them in their Will and demonstrate a need for a greater benefit from the estate. The value of the estate and the needs of other beneficiaries is relevant to what, if any, greater benefit will result from the FPA.

FPAs in small estates

The difficulty with FPAs in small estates is that there may not always be enough value in the estate to satisfy the competing needs of the other beneficiaries and the person/s making the FPA.

There is also a common assumption that the estate will pay all of the legal costs of all of the parties in an FPA.

This assumption is not always correct, particularly in small estates.

What happened in *Stojanovska v Stojanovski*?

This case involved an estate with assets totalling between about \$230,196 and \$248,756.

The deceased was survived by her estranged husband and her two adult children, a son and daughter. The deceased died intestate (without a Will) and so her estate would be distributed between her estranged husband (the first \$150,000 plus household chattels and one-third of the residue), her son (one-third of the residue) and her daughter (the remaining one-third of the residue).

The deceased's daughter (**the applicant**) made an FPA. The applicant sought to have any further provision she may receive to come out of her father's share of the estate, not her brother's.

Ultimately, the Court was satisfied that further provision ought be made for the applicant. However, the issue became the parties' legal costs.

Between the applicant, her father, and the independent administrator of the estate, legal costs totalled more than \$260,000, which the Judge noted exceeded the estimated value of the estate and described the total costs as “*grossly excessive, particularly having regard to the amount at stake*”.

In order for any of the beneficiaries to receive any amount from the estate, costs needed to be contained.

After an examination of the parties' legal costs, the Judge substantially discounted the parties' costs payable out of the estate:

Party	Actual Costs	Costs Allowed	Difference
The applicant	\$102,299	\$60,000	-\$42,299
The applicant's father	\$76,143	\$35,000	-\$41,143
The administrator	\$81,638	\$70,000	-\$11,638
Total	\$264,080	\$165,000	-\$99,080

Even with costs substantially discounted by the Judge, there remained only about \$65,000 to be divided among the applicant, her father and her brother.

The benefits ultimately received by the applicant and her father are outweighed by the costs they must pay from their own pocket.

The Lessons

Emotions and principles often feature in FPAs but these can come at great cost. A moral victory will not always yield a financial benefit.

Parties should be advised and encouraged to attempt to resolve all FPAs, but particularly FPAs in small estates, at an early stage, whether through mediation or other means, before the value of the estate is eroded by legal costs. As the Judge in this case said, litigation involving small estates cannot be given the “Rolls Royce” treatment.

Parties should actively seek to resolve these matters and should not assume that they will recover all of their legal costs out of the estate.

Should you wish to discuss any matters arising out of this article, please contact the author:

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