



Friday, 3 May 2024

Weekly Wills, Estates and Superannuation Law

A Weekly Bulletin listing Decisions
of Superior Courts of Australia covering Wills Estates and
Superannuation Law

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Executive Summary (One Minute Read)

Martin v Martin (WASC) - deceased had had testamentary capacity to execute a new will

HABEAS CANEM

Panting pooches



Benchmark

Summaries With Link (Five Minute Read)

Martin v Martin [2024] WASC 149

Supreme Court of Western Australia

Howard J

Probate - a deceased died at 93 years old who had married only once, and her husband had pre-deceased her in 2006 - she had no children and had not entered into a de-facto relationship - the deceased and her husband had made mirror wills in 1998, with the survivor leaving his or her estate in eleven equal shares to the deceased's brother and his wife and their five children, and the deceased's husband's brother's wife and her three children - the deceased's solicitor and one of the children on the husband's side sought to prove a 2019 will, as executors named in that will - three of the children on the deceased's side were defendants, and contended that the deceased had not had capacity to make the 2018 will, and sought to prove the 1998 will - held: the two doctors who gave medical evidence had not examined the deceased, and had worked from medical notes they had been provided - they both considered that the deceased had some cognitive impairment and some dementia, and that the deceased's judgement was most likely impaired at the time of making the 2019 will, but that there was no information to determine accurately the deceased's testamentary capacity - the Court had to be satisfied that the deceased had had capacity to make the 2019 will, and that that will was properly executed, and the plaintiffs then, in the absence of evidence to the contrary, could take advantage of the presumptions that the deceased was competent and knew and approved of the contents of the will - to have testamentary capacity, the testator had to satisfy the test from *Banks v Goodfellow*, in that she understood the nature of the act and its effects, understood the extent of the property of which she was disposing, was able to comprehend and appreciate the claims to which he ought to give effect and, with a view to the latter object, that no disorder of the mind poisoned her affections, perverted her sense of right, or prevented the exercise of her natural faculties - on the evidence of the solicitor and others who had dealt with the deceased during the preparation of the 2019 will, the Court was comfortably satisfied she had had testamentary capacity when she executed the will, that that will had been the product of her instructions, and that it was duly executed - probate in solemn form granted in respect of the 2019 will.

[Martin](#)

[From Benchmark Friday, 3 May 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

R v Secretary of State for the Home Department (UKSC) - Failed asylum seeker who committed criminal acts within the UK and who thwarted his deportation was lawfully refused government benefits and was not denied his rights under the *European Convention on Human Rights*

Summaries With Link (Five Minute Read)

R v Secretary of State for the Home Department [2024] UKSC 13

Supreme Court of the United Kingdom

Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lord Stephens, and Lady Simler

AM was a national of Belarus. He arrived in the UK in 1998 and claimed asylum. In 2000, he was denied asylum status and removed to Belarus. He was denied entry to Belarus and returned to the UK because he provided Belarus officials with false information that caused the officials to believe that he was not a citizen. Upon his return to the UK, he committed various criminal offences and was classified as a foreign criminal by British authorities. The Government desired to extradite AM to Belarus, but he resisted these attempts. Further, the British authorities refused to grant AM Leave to Remain, which would entitle him to full government benefits. Instead, AM is in 'limbo' status under which (1) he may not seek employment in the UK, (2) he is not entitled to National Health Service benefits, excepting emergency care, (3) he may not open a bank account, (4) he may not enter into a tenancy agreement, and (5) he receives very limited social welfare benefits, at the same level of failed asylum seekers awaiting deportation. Instead, he received a payment card for food, clothing, and toiletries at a subsistence level and government accommodation. As AM may not return to Belarus, he claimed that the British Government's action of placing him in a legal 'limbo' amounted to a denial of his rights under Article 8 of the *European Convention of Human Rights*, and that the Government had to grant him Leave to Remain status that would enable him to obtain full public benefits. Article 8 provides that 'everyone has the right to respect for his private and family life' and that 'there shall be no interference by a public authority in the exercise of this right except as in accordance with law and is necessary in a democratic society in the interests of national security, public safety' - administrative tribunals and then the Court of Appeal agreed with AM, and ordered the Home Secretary to grant AM Leave to Remain status. On review, in a unanimous decision, the Supreme Court reversed the Court of Appeal and held that the Home Secretary did not violate AM's Article 8 rights by placing him in 'limbo' status. The Supreme Court found that AM's attempts to thwart his deportation were highly material factors in evaluating whether the Home Secretary's actions were proportional. The Court added that the



public interest in maintaining effective immigration controls and containing welfare expenditures were relevant considerations. There was also a public interest in maintaining British employment opportunities for those lawfully in the UK. The Court said that, given AM's serious criminal offences, his deportation was in the public interest, and his efforts to undermine that through fraudulent activity were also valid considerations. While AM was entitled to Article 8 protections, the Supreme Court concluded that his extended limbo status was a proportionate means of achieving the lawful aims of the British Government.

[R v Secretary of State for the Home Department](#)



Poem for Friday

Song of Hope

By: Thomas Hardy (1840-1928)

O sweet To-morrow! –
After to-day
There will away
This sense of sorrow.
Then let us borrow
Hope, for a gleaming
Soon will be streaming,
Dimmed by no gray –
No gray!

While the winds wing us
Sighs from The Gone,
Nearer to dawn
Minute-beats bring us;
When there will sing us
Larks of a glory
Waiting our story
Further anon –
Anon!

Thomas Hardy, (2 June 1840 - 11 January 1928), author and poet, was born in Dorset, England. His father was a stonemason, and his mother who was well read, educated Thomas to the age of 8, at which time Thomas commenced as a student at Mr Last's Academy for Young Gentlemen. On leaving school at the age of 16, due to his family's lack of finances to fund a university education, Thomas became an apprentice architect. Much of his work involved the restoration of churches. In 1862 he enrolled at King's College, London. He is best known for his novels, including *Far from the Madding Crowd*, (1874) and *Tess of the d'Urbervilles*, (1891). He was appointed a Member of the Order of Merit in 1910 and was nominated for the Nobel Prize in Literature in that year. He received a total of 25 nominations for the Nobel Prize for literature during his life. Thomas Hardy died of pleurisy on 11 January 1928. He had wanted his body to be buried with his first wife Emma's remains at Stinsford. She had died in 1912 and much of his poetry was inspired by his feelings of grief following her death. His Executor Sir Sydney Carlyle Cockerell compromised by having Thomas Hardy's heart buried with the remains of his first wife Emma, and his ashes interred at Poets' Corner, Westminster Abbey. At the time of his death his estate was worth 95,418 pounds, the equivalent of over 6 million pounds



today. One of the largest literary societies in the world is the Thomas Hardy Society, based on Dorchester, <https://www.hardysociety.org/>.

Song of Hope by Thomas Hardy, read by Dylan Pearse, Music by Irish Folk Group, Kern <https://www.youtube.com/watch?v=Q1qo8sWTi6M>

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