

Friday, 12 April 2019

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 (1 minute read)

Re Wilson (VSC) - real property - wills and estates - severance of joint tenancies valid - registration of transfers appropriate

Re Tucker; Nunan v Aylward (VSC) - wills and estates - succession - intestacy - deceased and partner murdered - application for determination of 'order of death' - uncertain circumstances - partner deemed to have survived deceased

Re Peters (VSC) - costs - wills and estates - plaintiff sought defendant's removal as 'executor and trustee' and administration accounts' provision - proceeding dismissed - plaintiff to pay defendant's costs on indemnity basis

Southwell v Staite (No 2) (ACTSC) - costs - wills and estates - family provision - defendants sought indemnity costs order in reliance on offers of settlement - rejection of offers not unreasonable - indemnity costs refused

Summaries With Link (Five Minute Read)

Re Wilson [2019] VSC 211

Supreme Court of Victoria

Derham AsJ

Real property - wills and estates - plaintiff was son of deceased (Leonard) - plaintiff sought

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declarations transfers of land which Leonard had executed in own capacity and as attorney for late mother (Austral), were 'valid and effective' - plaintiff also sought that first defendant administrator of deceased's estate lodge transfers of land for registration - whether Leonard 'validly executed severance transfers' - whether severance transfers could be registered - whether deaths of Leonard or Austral 'revoked or rendered ineffective' the transfers - 'doctrine that equity favours a tenancy in common' - whether 'Leonard and Austral became tenants in common in equal shares' - held: severance of joint tenancies valid - Leonard and Austral became tenants in common in equal shares - registration of transfers appropriate 'so as to sever' joint tenancies.

[Re Wilson](#)

[From Benchmark Friday, 12 April 2019]

Re Tucker; Nunan v Aylward [2019] VSC 210

Supreme Court of Victoria McMillan J

Wills and estates - succession - intestacy - deceased and partner murdered - deceased and partner died intestate - application for determination of 'order of death' - plaintiff sought declaration that deceased survived partner - s184 *Property Law Act 1958* (Vic) - whether 'order of death' uncertain - whether Court should approve 'global settlement' - whether settlement in interests of 'minor children' - Part IV *Administration and Probate Act 1958* (Vic) - 'procedural irregularities and evidential gaps' - no 'summons for approval' filed - no 'grant of representation' in estate of deceased or of partner - only application before Court was for determination of order of death - held: deceased and partner died in circumstances which rendered uncertain which had survived the other - deceased's partner, being the younger of the two, deemed to have survived deceased - declaration made.

[Re Tucker](#)

[From Benchmark Friday, 12 April 2019]

Re Peters [2019] VSC 200

Supreme Court of Victoria

McMillan J

Costs - wills and estates - plaintiff sought defendant's removal as deceased estate's 'executor and trustee' and administration accounts' provision under s28 *Administration and Probate Act 1958* (Vic) - proceeding dismissed - determination of costs - s24(1) *Supreme Court Act 1986* (Vic) - O 63 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - whether application misconceived - whether application had 'proper basis' - whether application had 'no real prospect of success' - whether 'special circumstances' warranting 'special costs order' in defendant's favour - held: plaintiff to pay defendant's costs on indemnity basis.

[Re Peters](#)

[From Benchmark Friday, 12 April 2019]

Southwell v Staite (No 2) [2019] ACTSC 83

Supreme Court of the Australian Capital Territory



McWilliam AsJ

Costs - wills and estates - family provision - Court have judgment concerning 'proper distribution' to plaintiff under deceased's will concerning plaintiff's family provision application - defendant sought variation of costs order - defendant sought indemnity costs order in reliance on 'two offers of settlement' - whether unreasonable of plaintiff to reject offers - held: rejection of offers not unreasonable - indemnity costs order refused.

[Southwell](#)

[From Benchmark Friday, 12 April 2019]

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A Midsummer Night's Dream, Act II, Scene I [Over hill, over dale]

By: William Shakespeare, 1564 - 1616

A wood near Athens. A Fairy speaks.

Over hill, over dale,
Thorough bush, thorough brier,
Over park, over pale,
Thorough flood, thorough fire,
I do wander every where,
Swifter than the moon's sphere;
And I serve the fairy queen,
To dew her orbs upon the green:
The cowslips tall her pensioners be;
In their gold coats spots you see;
Those be rubies, fairy favours,
In those freckles live their savours:
I must go seek some dew-drops here
And hang a pearl in every cowslip's ear.
Farewell, thou lob of spirits: I'll be gone;
Our queen and all her elves come here anon.

https://en.wikipedia.org/wiki/William_Shakespeare

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