

Friday, 30 October 2020

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)

Crawford v Munden; In the Estate of Angel (NSWSC) - wills and estates - succession - plaintiff adult only child of deceased sought further provision from deceased's will - family provision order granted

Moore v Aubusson (NSWSC) - contract - estoppel - wills and estates - trusts - defendant executor held properties on trust for plaintiffs in equal shares as tenants in common - declaration and orders made

Rathswohl v Court (NSWSC) - evidence - wills and estates - objection to tender of mobile phone recording made without testator's consent - recording admitted

Re Stojanovska; Stojevski v Stojevski and Anor (VSC) - summary judgment - wills and estates - succession - plaintiff sought provision from estate of deceased 'maternal aunt' - defendants granted summary judgment

Summaries With Link (Five Minute Read)

Crawford v Munden; In the Estate of Angel [2020] NSWSC 1463

Supreme Court of New South Wales

Kunc J

Wills and estates - succession - family provision - plaintiff was adult only child of deceased -

plaintiff sought further provision from deceased's estate - will did not make provision for plaintiff - estrangement - Ch 3 *Succession Act 2006* (NSW) - adequacy of provision - 'wise and just testator - whether deceased's will made 'adequate provision' for plaintiff's 'proper maintenance or advancement in life' - held: family provision order granted.

[View Decision](#)

[From Benchmark Monday, 26 October 2020]

Moore v Aubusson [2020] NSWSC 1466

Supreme Court of New South Wales

Ward CJ in Eq

Contract - estoppel - wills and estates - trusts - plaintiffs sought declaration that defendant executor held whole of deceased's estates on trust for plaintiffs 'in equal shares as tenants in common' - plaintiffs also sought transfer of estate to them - contract - proprietary estoppel - equitable estoppel - whether deceased made representation to plaintiffs that she would leave whole estate to them on certain conditions - held: Court satisfied deceased made representation to plaintiffs that she would leave properties to them on certain conditions but promise did not comprise estate's entirety - defendant held properties trust for plaintiffs in equal shares as tenants in common - declaration and orders made.

[View Decision](#)

[From Benchmark Tuesday, 27 October 2020]

Rathswohl v Court [2020] NSWSC 1490

Supreme Court of New South Wales

Rees J

Evidence - wills and estates - succession - plaintiff, under s59 *Succession Act 2006* (NSW), sought provision from estate of deceased father - plaintiff tendered recording of conversation between other child in family (Mrs Davies) and father without 'knowledge or consent' of father - Ms Davies made recording on her mobile phone - objection taken to tender on basis recording was 'improperly or illegally obtained' - whether conversation's recording was 'reasonably necessary for the protection of Mrs Davies' 'lawful interests' under s7(3)(b)(i) *Surveillance Devices Act 2007* (NSW) - 'reasonably necessary for the protection of the lawful interests'; - held: recording admitted without consent.

[View Decision](#)

[From Benchmark Wednesday, 28 October 2020]

Re Stojanovska; Stojevski v Stojevski and Anor [2020] VSC 702

Supreme Court of Victoria

Judicial Registrar Englefield

Summary judgment - wills and estates - succession - plaintiff, under pt IV *Administration and Probate Act 1958* (Vic) (Administration and Probate Act), sought provision from estate of deceased 'maternal aunt' - defendants sought summary judgment on basis claim had 'no real prospect of success' - s63 *Civil Procedure Act 2010* (Vic) - 'testators family maintenance' claims



- interests of justice - whether 'only a full hearing on the merits' appropriate - 'threshold dependency' - ss91(2)(b) & 91(4)(d) Administration and Probate Act - held: summary judgment granted.

[Re Stojanovska](#)

[From Benchmark Thursday, 29 October 2020]



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The Grasshopper

By: Richard Lovelace

O THOU that swing'st upon the waving hair
Of some well-fillèd oaten beard,
Drunk every night with a delicious tear
Dropt thee from heaven, where thou wert rear'd!

The joys of earth and air are thine entire,
That with thy feet and wings dost hop and fly;
And when thy poppy works, thou dost retire
To thy carved acorn-bed to lie.

5

Up with the day, the Sun thou welcom'st then,
Sport'st in the gilt plaits of his beams, 10
And all these merry days mak'st merry men,
Thyself, and melancholy streams.

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

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