

CITATION: *In the Estate of Bailey* [2019] NTSC 33

PARTIES: IN THE ESTATE OF BAILEY

ON REFERENCE from the Registrar of
the Supreme Court of the Northern
Territory

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 51 of 2019 (21912553)

DELIVERED ON: 15 May 2019

DELIVERED AT: Darwin

JUDGMENT OF: Grant CJ

CATCHWORDS:

SUCCESSION – WILLS, PROBATE AND ADMINISTRATION –
PROBATE AND LETTERS OF ADMINISTRATION

Reference by the Registrar pursuant to s 17(2)(c) of the *Administration and Probate Act 1969* (NT) – whether administration should be granted – order that the Registrar may grant administration of the estate to the applicant.

Administration and Probate Act 1969 (NT) s 14, s 17, s 22, s 33, s 66

In the Goods of Gill (1828) 1 Hagg 342, referred to.

Judgment category classification: B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

In the Estate of Bailey [2019] NTSC 33
No 51 of 2019 (21912553)

IN THE ESTATE OF BAILEY
ON REFERENCE FROM THE
REGISTRAR OF THE SUPREME
COURT OF THE NORTHERN
TERRITORY

CORAM: GRANT CJ

REASONS FOR ORDER

(Delivered 15 May 2019)

- [1] This is a reference by the Registrar pursuant to s 17(2)(c) of the *Administration and Probate Act 1969* (NT). That section provides relevantly that the Registrar shall not, without an order of the Court, grant administration of the estate of a deceased person in any case in which it appears to the Registrar to be doubtful whether such a grant should be made.
- [2] The deceased died intestate in Darwin on 25 December 2018. The deceased was domiciled in the Northern Territory and left both moveable and immovable assets in this jurisdiction. The net value of the estate is estimated in the Affidavit of Assets and Liabilities to be in the order of \$1,276,000.

[3] At the time of his death the deceased was married to Lynette Jean Buttling. This was the deceased's second marriage. The deceased was also survived by two adult daughters from his first marriage, Terina Louise Smith aged 41 years at the date of death and Pania Michelle Bailey-Jenkin aged 38 years at the date of death. By application filed on 22 March 2019, Ms Smith seeks a grant of letters of administration of the estate.

[4] The Court is vested with broad powers to grant administration of an estate to the individual who is considered fit to assume the responsibilities of administrator.¹ So far as is relevant for these purposes, s 22 of the *Administration and Probate Act* provides that the Court may grant administration of the estate of an intestate person to the spouse of the deceased person or one or more of the next of kin, including conjointly. While these powers are given under statute, prior to the enactment of such legislation, courts generally followed the rule that the grant should follow the interest.² That principle is also applied in the exercise of the statutory powers. This means that administration will ordinarily be granted to the individual most interested in the efficient administration of the estate.

[5] As the deceased was domiciled in the Northern Territory at the date of his death, the distribution of his estate is *prima facie* governed by s 66

¹ *Administration and Probate Act 1969* (NT), ss 14, 33.

² *In the Goods of Gill* (1828) 1 Hagg 342.

of the *Administration and Probate Act*. That section provides that the persons entitled to take an interest in the intestate estate, and the respective interests in that estate, are to be ascertained by reference to Schedule 6 to the Act. So far as is relevant for these purposes, that Schedule provides that where the intestate is survived by a spouse and issue, the spouse is entitled to the prescribed sum and an additional sum equal to one-third of the value of the balance of the estate, and the issue are entitled to the remainder in equal shares.

[6] In the present case, the deceased and Ms Buttling married in New Zealand on 8 June 2013. Prior to the marriage, on 6 June 2013 they entered into a Binding Financial Agreement pursuant to s 90B of the *Family Law Act 1975* (Cth). Following the marriage, on 14 June 2013 they entered into a Contracting Out Agreement in New Zealand pursuant to the *Property (Relationships) Act 1976* (NZ). The intention evident from the terms of those agreements was that the parties would maintain their respective property separately, and that neither party would claim any part of the property of the other should they separate or divorce, or upon death.

[7] While the Australian agreement does not expressly oust the operation of s 66 of the *Administration and Probate Act*, it does by its terms preclude claims of any nature relating to financial matters in the event that the marriage ends or one of the parties dies. It also contains a specific and mutual release in relation to any right under the *Family*

Provision Act 1970 (NT) and equivalent legislation in other jurisdictions. The New Zealand agreement provides for the separate holding of property, and is expressed to be “in full and final settlement of all claims that each of them may have against the other under the [*Property (Relationships) Act*], or at common law or at equity”.

Although no specific reference is made to a death event, the agreement is expressed to “bind the executors, administrators and personal representatives” of both parties.

[8] It is unnecessary for present purposes to make any finding in relation to the operation of s 66 of the *Administration and Probate Act* in those circumstances, and nor is that a matter properly determined in the probate jurisdiction.

[9] Following the death of the deceased, Ms Smith engaged a solicitor to apply for the grant of letters of administration of the estate. On 18 January 2019, the solicitor wrote to Ms Buttling seeking her consent to the application and attaching documents by which that consent could be formalised. No response was received. On 8 February 2019, Ms Bailey-Jenkin advised the solicitor that she had made contact with Ms Buttling, who said that she was taking legal advice concerning consent to the application. On 20 March 2019, Ms Bailey-Jenkin advised the solicitor that Ms Buttling had said she was returning the draft affidavit to the solicitor because her name was spelt incorrectly. As deposed,

that advice contained no clear indication as to whether Ms Buttling intended to consent to the application or not.

[10] As one of the next of kin, Ms Smith is expressly authorised to make application for, and to be granted, letters of administration. Regardless of the effect of the financial agreements, Ms Smith has a substantial interest in the administration of the estate. Ms Bailey-Jenkin has provided a formal consent to the grant of administration to Ms Smith. The intention to make the application for administration was notified in accordance with the statutory requirements. The evidence from the solicitor acting for Ms Smith establishes, albeit on a hearsay basis, that Ms Buttling has been notified of Ms Smith's intention to make application for the grant of letters of administration. Ms Buttling has lodged no caveat or other objection.

[11] In those circumstances, I order that the Registrar may grant letters of administration of the estate of Trevor Noel Bailey (deceased) to Terina Louise Smith.
