

# State Reporting Bureau



Queensland Government  
Department of Justice and Attorney-General

## Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

REVISED COPIES ISSUED  
State Reporting Bureau

Date: 21 July, 2003

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Application No 479 of 2002

JODIE MEREDITH DELANEY as litigation  
guardian for CODY DAVID JOY (under Part  
IV sections 40-44, Succession Act 1981)

First Applicant

and

JODIE MEREDITH DELANEY as litigation  
guardian for MARK CARMELO PATRICK TRAVIA  
(under Part IV sections 40-44,  
Succession Act 1981)

Second Applicant

and

ANNE MIZZI (as Executor of the Will of  
the late DAVID PATRICK JOY deceased)

Respondent

Application No 486 of 2002

GAVIN MARK FARRAWAY (under Part IV  
Sections 40-44, Succession Act 1981)

Applicant

and

ANNE MIZZI (as Executor of the Will of  
DAVID PATRICK JOY deceased)

Respondent

CAIRNS

..DATE 14/07/2003

JUDGMENT

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: By agreement with the parties, the matter of the applications of Cody David Joy, Mark Carmelo Patrick Travia, action number 479 of 2002, should be heard together with the application of Gavin Mark Farraway, number 486 of 2002.

The two applications now came down to a question of this Court sanctioning settlements which have been reached in respect of the claimants against the estate of David Patrick Joy.

David Patrick Joy died at Atherton on the 9th of January 2002. Probate of his will was granted in this Court on the 19th of June 2002. His daughter, Anne Mizzi, was appointed as his sole executrix. The deceased left his estate to his two sisters. The claimants are each children or stepchildren of the deceased. No provision has been made for the welfare of any of them.

In relation to Cody Joy, Cody is a child of the deceased and is two years of age. The child, Mark Travia, is a stepchild of the deceased and is 14 years of age. He lived with the deceased and his mother, Jodie Delaney, with whom the deceased lived in a de facto relationship.

The claimant, Mark Farraway, is now 29 years of age. He too is a stepchild of the deceased, being the child of a former wife of the deceased who herself predeceased the deceased.

The question of proper provision for the infant children does not give rise to any particular problems. The fact that they

were each dependent at the time of the deceased's death and their young ages, indicates a prima facie liability on the part of the deceased to maintain them. The fact that no provision is made for their maintenance clearly gives rise then to the consideration of what provisions should be made in the circumstances.

The deceased's net estate is valued between \$300,000 and \$320,000, the difference being because of the varying valuations given to the deceased's house at Innisfail.

Counsel on behalf of the applicants, Mr Philp, has prepared an opinion dated the 9th of July 2003, setting out the rationale behind the amounts which have been suggested in the proposed settlement for which sanction is now sought. I accept in the circumstances, as outlined in that opinion, that all relevant considerations have been made and that the amounts calculated are appropriate. I should mention that the beneficiaries under the will were involved in that settlement process and obviously have agreed to the amounts claimed.

The claim for Mark Farraway presented some more difficulties, firstly, because of his mature years; secondly, because of his limited contact with the deceased and because there were also allegations of disempowering conduct on his part. It has been stated in the opinion of Mr Morzone dated the 11th of July 2003 that some clarification has been gained in respect of that disempowering conduct, such that it was thought, in its nature or extent, not sufficient to disempower Mr Farraway

from any provision, but rather that it reduce the amount of the benefit he should receive.

I am satisfied on the material before me that proper provision would be made for Mark Farraway in the amount of the settlement proposed in respect of his claim.

The fact that the parties have reached this agreement after significant exchanges of information and negotiations is a factor I take into account. But independently of that, having read the material, I am satisfied that the sanction is appropriate for all claimants, having regard to the englobo effect of the applications on the estate and the competing claims of the beneficiaries under the will.

I am satisfied that the sanction in respect of the infant claimants ought to be sanctioned. In those circumstances, I will make orders in terms of the draft initialled by me and placed with the papers.

I direct that the respective opinions of Mr Philp of counsel and Mr Morzone of counsel be placed in separate envelopes, each to be marked "Not to be opened except with the leave of the Court."

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