

SUPREME COURT OF QUEENSLAND

CITATION: *The Public Trustee of Queensland as Administrator of the Estate of Phyllis Mary Hoskin, deceased v Hoskin & Ors* [2016] QSC 31

PARTIES: **THE PUBLIC TRUSTEE OF QUEENSLAND AS ADMINISTRATOR OF THE ESTATE OF PHYLLIS MARY HOSKIN, DECEASED**
(applicant)
v
WILLIAM SANG HOSKIN, PHILIP ALEXANDER HOSKIN, ELIZABETH ALLISON NIBBS, ESTATE OF CAROL ANN CROCKER DECEASED, FRANCIS AARON HOSKIN AND GRAHAM ANTHONY HOSKIN
(first respondents)
STEWART KENNETH KING
(second respondent)
ATTORNEY-GENERAL FOR QUEENSLAND
(third respondent)

FILE NO/S: SC No 10662 of 2015

DIVISION: Trial Division

PROCEEDING: Originating application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 3 March 2016

DELIVERED AT: Brisbane

HEARING DATE: 19 February 2016

JUDGE: Boddice J

ORDERS: **1. The Court advises and directs the applicant that he is justified in distributing the estate of Phyllis Mary Hoskin, deceased upon intestacy by paying it to the first respondents in the following proportions:**

- a. William Sang Hoskin: one-third;**
- b. Philip Alexander Hoskin: one-ninth;**
- c. Estate of Elizabeth Allison Nibbs, deceased: one-ninth;**
- d. Estate of Carol Ann Crocker, deceased: one-ninth;**

e. **Francis Aaron Hoskin: one-sixth; and**

f. **Graham Anthony Hoskin: one-sixth.**

2. The Court orders that all parties' costs of this application be paid from the estate of Phyllis Mary Hoskin, deceased on the indemnity basis.

CATCHWORDS: SUCCESSION – INTESTACY AND DISTRIBUTION ON INTESTACY – where the Public Trustee, pursuant to s 134 of the *Public Trustee Act 1978 (Qld)*, sought advice and directions in relation to the distribution of the estate of the deceased, pursuant to intestacy – where deceased died without spouse or issue – where deceased had no birth certificate – where there was no definitive, direct evidence of the identity of the deceased and her lineage – whether the deceased was within the family tree of either the first respondents or the second respondent, or neither, thus having no living relatives – whether the estate ought to be distributed to the first respondents, the second respondent or to the Crown *bona vacantia*

Public Trustee Act 1978 (Qld), s 134

COUNSEL: R T Whiteford for the applicant
No appearances for the first respondents
A Julian-Armitage for the second respondent
A H McCabe for the third respondent

SOLICITORS: The Public Trustee of Queensland for the applicant
No appearances for the first respondents
Feeney Family Lawyers for the second respondent
The Attorney-General for Queensland for the third respondent

[1] By originating application, filed 23 October 2015, the Public Trustee of Queensland, as Administrator of the Estate of Phyllis Mary Hoskin, deceased, sought advice and directions in relation to the distribution of the estate of the deceased, pursuant to intestacy. The advice and directions are sought pursuant to s 134 of the *Public Trustee Act 1978 (Qld)*.

[2] At issue is whether the estate ought to be distributed to the first respondents, the second respondent or to the Crown *bona vacantia*. Central to the determination of that question is the identity of the deceased at birth.

Background

[3] The deceased died on 22 November 2009. She did not leave a Will and died without spouse or issue. Her estate is valued at about 1.2 million dollars. The deceased's estate largely comprises assets inherited pursuant to the Will of Aaron Hoskin, who left twenty per cent of his estate to, "my daughter Mary Phyllis Hoskin", when he died in 1938.

- [4] The deceased's death certificate recorded her father's surname as Hoskin and her mother's name as Mary. Her age at death was recorded as ninety three years, suggesting a birth date in or about 1916. However, documentation relating to the deceased provides various dates of birth, being 28 February 1913, 28 February 1915 or 28 February 1916.
- [5] The deceased was raised as part of the household of Aaron and Margaret Hoskin, an affluent and socially prominent couple with a large family then living on a pastoral property at Bell, near Dalby in the State of Queensland. She attended Rangeville State School in Toowoomba. Its admission register records her date of admission as 23 July 1919, aged six years and five months, suggesting a birth date in early 1913.
- [6] The deceased's army records from World War II listed her date of birth as 28 February 1913. They named Margaret Hoskin as her mother and next of kin.
- [7] Whilst that material is suggestive of the deceased being a child of Aaron and Margaret Hoskin born on 28 February 1913, a search of the records of the Queensland Registrar General of Births, Deaths and Marriages has no birth certificate for Phyllis Mary Hoskin. All of Aaron and Margaret Hoskin's other known children were registered at birth, even one who died shortly after birth.
- [8] A search of the relevant records revealed no record of the deceased having been adopted by Aaron and Margaret Hoskin. That is not necessarily unusual, because adoptions in that era were private arrangements made pursuant to the *Infant Life Protection Act 1905*.

Application

- [9] As a consequence of the lack of definitive evidence as to the deceased's identity at birth, the Public Trustee undertook extensive investigations. The Public Trustee seeks advice and directions as to the appropriate distribution based on the results of those investigations. There are three possibilities.
- [10] First, the deceased is the natural child of Aaron and Margaret Hoskin, but for some unknown reason her birth was not registered despite the births of the other six children who survived infancy having birth certificates. In that event, the Public Trustee seeks the Court's direction that he is justified in distributing the deceased's estate to the first respondents as the only known living relatives of the Hoskin family eligible to take pursuant to an intestacy.
- [11] Second, the deceased was born on 28 February 1913 to Johanna King at the Lady Bowen Hospital, Brisbane and given the birth name "Phillis". There is a birth certificate for a Phillis King on that date. In that event, the Public Trustee seeks the Court's directions that he is justified in distributing the deceased's estate to the second respondent, the only known relative of the King family eligible to take pursuant to an intestacy.
- [12] Third, the deceased was not the biological child of Aaron and Margaret Hoskin, but was raised as their child and the deceased's biological parents are not able to be identified despite due search. In that event, the Public Trustee seeks the Court's direction that he is justified in distributing the deceased's estate *bona vacantia* to the Crown, as there is no

identifiable living relative eligible to take pursuant to an intestacy. Even if the deceased was adopted by the Hoskins, the *Infant Life Protection Act 1905 (Qld)* contains no provision about succession. Accordingly, the Hoskin family would not be entitled to her estate on intestacy.

Evidence

- [13] The deceased was raised as a child of Aaron and Margaret Hoskin. She lived with Aaron and Margaret Hoskin and their children on their pastoral property near Bell, in their home in Toowoomba, and later, in their home in Brisbane until the death of Aaron in 1938.
- [14] The deceased was also widely known as the daughter of Aaron and Margaret Hoskin. Newspaper articles concerning Aaron and/or Margaret referred to their daughter “Phyllis”. An article recording Aaron’s death also referred to his daughter “Miss Phyllis Hoskin”.
- [15] The deceased was referred to by Aaron Hoskin as his daughter in his Will. Aaron Hoskin’s Will left twenty per cent of his estate to his “daughter”, Phyllis. The deceased’s army records also record Margaret Hoskin as her mother and next of kin.
- [16] The deceased’s death certificate records her father’s surname as “Hoskin”, although her mother’s name is recorded as “Mary”. However, the death certificates of both Aaron and Margaret Hoskin do not name the deceased as one of their children. All of their children, whether living and dead, are otherwise referred to in those certificates.
- [17] There is evidence Margaret Hoskin said they adopted the deceased. AAC Hoskin, a son of Aaron and Margaret Hoskin, in a letter dated 28 July 1951 advised the Public Curator that Margaret Hoskin had adopted the deceased when she was an infant and the deceased thereafter lived with his parents and his father’s sisters until his father’s death in 1938. By letter dated 8 May 2012, Aaron Hoskin’s grandson, Graham Hoskin, advised the Public Trustee he had always been told the deceased was adopted by his grandparents.
- [18] If the deceased was adopted by Aaron and Margaret Hoskin, there is a dearth of material to identify when the deceased was adopted and in what circumstances. However, a search of the Registrar General’s records for all females born in Queensland on 28 February 1913 reveals one female child who could be the deceased. A search of the deceased’s other suggested birth dates reveals no possible female child who could be the deceased.
- [19] The female child born on 28 February 1913 was registered as being the child of Johanna King. That child was born at the Lady Bowen Hospital, then a hospital for unmarried mothers. The child was registered with the name “Phillis”. The birth certificate did not identify the father. Johanna King died on 17 February 1957. She had married in 1922. Her death certificate records her as having no children.
- [20] A search of the relevant records revealed no Queensland marriage or death certificate for Phillis King. The absence of such certificates is suggestive of “Phillis King” having been adopted after birth. A search of the relevant records in other States also failed to reveal any record of a marriage or death of a Phillis King.

- [21] The only known living relative from the King family, the second respondent, knows little about his father's family. He had never heard of Phillis King, although he contends the evidence supports the conclusion that the deceased was Phillis King. That evidence includes the similarity in first names and a similarity in blood type.

Findings

What was the deceased's date of birth?

- [22] Although the deceased's date of birth has been recorded as variously 28 February 1913, 28 February 1915 and 28 February 1916, it is likely the deceased's army records for World War II accurately recorded the deceased's date of birth. The date recorded in those records was 28 February 1913. That date of birth is also supported by the register of admission to Rangeville State School.
- [23] Whilst a search of the relevant records reveals one female child born on that date, who does not have a subsequent record of marriage or death, thereby suggesting that child was adopted, it does not follow that the deceased is that female child. It may be that the deceased's birth was not, for whatever reason, registered or that the deceased was not born in Queensland. A determination of the deceased's identity therefore requires close consideration of the available information.

Is the deceased a natural child of Aaron and Margaret Hoskin?

- [24] Aaron Hoskin died on 20 February 1938, aged seventy five years. He was a wealthy pastoralist who was socially prominent. He had held positions of influence in the pastoral industry. Aaron Hoskin specifically recorded the deceased as his daughter in his last Will. Aaron Hoskin left the deceased twenty per cent of his estate, "for her use and benefit absolutely". The fact that Aaron Hoskin's last Will specifically referred to the deceased as his daughter, and provided for a significant bequest to her, is compelling evidence the deceased was the daughter of Aaron Hoskin.
- [25] Whilst Aaron Hoskin's death certificate did not record the deceased as one of his children, the informant is recorded as his son, AAC Hoskin. In 1951, AAC Hoskin wrote to the Public Curator in relation to the deceased, whose financial affairs were now being administered by the Public Curator. In that letter, AAC Hoskin advised that his mother had adopted the deceased when she was young and that the deceased had lived with his parents and two sisters of his father, "until my father's death in 1938". Thereafter, the deceased had lived and worked in Brisbane. Against that background, it is unsurprising that AAC Hoskin, as the informant on Aaron Hoskin's death certificate, would not have recorded the deceased as Aaron Hoskin's child.
- [26] The significance of Aaron Hoskin's reference to the deceased in his Will as his daughter, and of the bequest to her, is magnified by a consideration of Aaron Hoskin's Will. Apart from leaving twenty per cent of his estate to the deceased, Aaron Hoskin left five per cent of his estate for his son, Arthur Andrew Chapman Hoskin, and the remaining seventy five per cent to his sister for her use and benefit absolutely. The Will of Aaron Hoskin further stated:

I DECLARE that I have made no provision under this my Will for my wife and children other than those mentioned in clause 2 above for the reason that I have prior to the execution of this Will made adequate provision for them AND I FURTHER DECLARE that I am making provision under this my Will for my sister Julia in the belief that she will on her death make provision for my children out of her estate and also in consideration of the assistance already given by her to certain of my children.

- [27] The contents of Aaron Hoskin's Will are strongly suggestive of the deceased being his natural child, and of Aaron Hoskin wanting to ensure she was adequately provided for on his death.
- [28] Aaron Hoskin's grandson, in correspondence with the Public Trustee, expressed doubt that the deceased was Aaron Hoskin's natural daughter. He stated Aaron Hoskin's social prominence and position in society was such that it is doubtful he would have achieved those positions if there had been any hint of scandal. Whilst accepting the genuineness of that assertion, it cannot displace the significance of Aaron Hoskin's assertions in his last Will that the deceased was his daughter.
- [29] It is also relevant to consider the sources of the information that the deceased had been adopted by Aaron and Margaret Hoskin when she was an infant. Those assertions are all said to have come from Margaret Hoskin. The letter to the Public Trustee in 1951, from AAC Hoskin, expressly said his "mother" adopted the deceased. It also said the deceased lived with his parents until his father's death. There is no explanation as to why a single daughter, in 1938, would no longer have stayed with her mother after the father's death. If the deceased was the child of Aaron Hoskin, but not the child of Margaret Hoskin, such an event would be explicable.
- [30] A consideration of all of the available material satisfies me it is more probable than not that the deceased was the natural child of Aaron Hoskin but not of Margaret Hoskin.

Is the deceased Phillis King?

- [31] A finding that the deceased is the natural child of Aaron Hoskin does not necessarily exclude a finding that the deceased was also Phillis King. Phillis King was born to Johanna King, who was unmarried at the time. It is possible that Johanna King was pregnant to Aaron Hoskin. However, there is simply no evidence of any connection whatsoever between Johanna King and Aaron Hoskin. They did not live near each other and there is no suggestion the families knew each other. There is also no evidence Johanna King worked or lived in the area in which Aaron Hoskin resided at or prior to the birth of Phillis King.
- [32] The fact there is no other unaccounted for female child registered as being born on 28 February 1913 does not provide persuasive proof the deceased is Phillis King. There are many plausible explanations to explain an absence of the deceased's birth being recorded in Queensland birth records.
- [33] The second respondent contends it is significant Johanna King's child was named "Phillis". However, that fact of itself is of limited significance in the absence of any evidence of a connection between Johanna King and Aaron and Margaret Hoskin. Without that connection, there is no plausible explanation for why an affluent and socially prominent couple, living on a country property near Bell, would adopt a child born in

Brisbane to an unmarried mother. This is particularly so when that couple had a number of living children of their own at that time.

- [34] The second respondent contends it is also significant that he and the deceased had the same blood type. However, that blood type is the second most common blood type in the Australian population. That similarity is insufficient to prove the necessary biological connection.
- [35] A consideration of the available material as a whole does not establish, even on the balance of probabilities, that the deceased was Phillis King.

Conclusion

- [36] It is more probable than not that the deceased was the natural child of Aaron Hoskin. It is not more probable than not that the deceased was born Phillis King.
- [37] The above conclusions justify a distribution of the estate of the deceased on intestacy to the first respondents, in the proportions contended for by the applicant.
- [38] The Court advises and directs the applicant that he is justified in distributing the estate of Phyllis Mary Hoskin, deceased, upon intestacy, by paying it to the first respondents in the following proportions:
- (a) William Sang Hoskin: one-third;
 - (b) Philip Alexander Hoskin: one-ninth;
 - (c) Estate of Elizabeth Allison Nibbs, deceased: one-ninth;
 - (d) Estate of Carol Ann Crocker, deceased: one-ninth;
 - (e) Francis Aaron Hoskin: one-sixth;
 - (f) Graham Anthony Hoskin: one-sixth.

Costs

- [39] The Public Trustee contends it is appropriate for the costs of all parties to the application to be paid from the estate of Phyllis Mary Hoskin, deceased, on an indemnity basis.
- [40] Having regard to the complexities of the issues, and the potential effect of any findings in relation to the entitlements of the respondents to the estate of the deceased, I am satisfied it is appropriate to make a costs orders in those terms.

Orders

- [41] I make orders in terms of the draft, which I initial and place with the papers.