

SUPREME COURT OF QUEENSLAND

CITATION: *Boyle & Ors v Boyle* [2004] QCA 387

PARTIES: **FREDERICK JOHN BOYLE**
REGINALD JAMES HAMILTON BOYLE
DOUGLAS BRUCE HAMILTON BOYLE
IAN STEWART HAMILTON BOYLE
(respondents)
v
PETER HAMILTON BOYLE
(applicant)

FILE NO/S: Appeal No 6364 of 2004
SC No 152 of 2004

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time

ORIGINATING COURT: Supreme Court at Rockhampton

DELIVERED EX TEMPORE ON: 15 October 2004

DELIVERED AT: Brisbane

HEARING DATE: 15 October 2004

JUDGES: de Jersey CJ, McMurdo P and Chesterman J
Separate reasons for judgment of each member of the court,
each concurring as to the order made

ORDER: **Application for an extension of time within which to
appeal refused with costs to be assessed**

CATCHWORDS: SUCCESSION – EXECUTORS AND ADMINISTRATORS
– RIGHTS, POWERS AND DUTIES – GETTING IN AND
REALISING ESTATE – where the applicant failed to realise
and distribute the property of his late father’s estate – where
an order was made removing the applicant as trustee and
executor of his late father’s estate – whether the learned
Judge’s order replacing the applicant as executor and trustee
was correct

COUNSEL: The applicant appeared on his own behalf
C D Press for the respondents

SOLICITORS: The applicant appeared on his own behalf
Rees R & Sydney Jones for the respondents

THE CHIEF JUSTICE: The applicant Mr Peter Hamilton Boyle by an application filed on 20 September 2004 applied for an extension of time within which to appeal against orders made by the learned central Judge on 15 June 2004. The formal order, I note, is incorrectly dated 8 June 2004 and although this is really without consequence for the purposes of the present application we should use the opportunity to order that the order now be amended to record as its date 15 June 2004.

The order made by the central Judge provided for the removal of the present applicant as trustee and executor of his late father's estate. His father who died in 1954 left his substantial asset - a house property - to his widow and one of his children for life and, upon the death of the widow, thereafter equally to his five children. The widow died in the year 2000. The children are all of age. They have been unsuccessfully seeking to have the property realised and the proceeds distributed among them. The applicant has failed to do that.

The learned Judge ordered that the applicant be removed as trustee and executor and appointed a substitute, and his Honour burdened the applicant's interest in the estate with one-half of the costs of the application. He limited the costs in that way to reflect the circumstance that the applicant had sought, if unsuccessfully, to have the issues resolved by way of mediation.

In seeking to explain his delay in challenging the orders, the applicant says substantially that he was suffering from influenza over a period of a couple of months and has been the carer of a partner suffering from cancer. In my view, those matters aside, the application should not succeed because the appeal would be devoid of merit.

The learned Judge's order replacing the applicant as executor and trustee was plainly right. The basis on which the applicant had declined to sell the property, which apparently concerned a claim for compensation arising from care given to his mother was, in law, untenable. As the Judge pointed out, there may have been a moral claim but it was not one which could, in law, burden the estate.

Also untenable are the other points raised in the applicant's written material and pursued to some extent here orally this morning - a suggested irregularity in the appointment of the Governor General of the Commonwealth of Australia, pending litigation in the United Kingdom concerning that, and the High Court's original jurisdiction under section 75(4) of the Commonwealth Constitution. The applicant's unparticularised references to deception by lawyers and incompleteness in the Court transcript likewise do not advance the matter.

This morning, orally, the applicant challenged the suitability of the replacement trustee. We were informed by Mr Press that that has not been raised before. Mr Boyle suggested it had been raised. If it was raised, we must take it that the Judge

considered it. But it is significant that this issue is not referred to in the reasons for Judgment and that would, to my mind, suggest that it was not raised.

Significantly for the present also, there is simply no evidence on that aspect before us sufficient even to raise the issue for the purposes of determining its relevance to the application for an extension of time.

In addition to ordering amendment of the date of the order, I would order that the application for an extension of time within which to appeal be refused with costs to be assessed.

THE PRESIDENT: I agree.

CHESTERMAN J: I agree.

THE CHIEF JUSTICE: Those are the orders.
