

CIVIL JURISDICTION

MUIR J

IN THE MATTER OF THE SUCCESSION ACT

and

IN THE MATTER OF THE WILL OF GLORIA MARGARET SVOBODA
DECEASED

and

IN THE MATTER OF AN APPLICATION BY COLETTE SVOBODA MOMMER
UNDER PART IV OF THE SAID ACT

BRISBANE

..DATE 07/05/97

..Judgment

HIS HONOUR: This is an application by Colette Svoboda Mommer under section 41 of the Succession Act 1981 for further provision out of the estate of her late mother Gloria Margaret Svoboda. The respondent to the application is Paul Andre Svoboda who is a beneficiary under the will of Gloria Margaret Svoboda and the executor of her estate. The children of Paul Svoboda are represented by Mr Sparkesman, a principal of Messrs Middletons Moore and Bevins who appears for their mother, Rauthita Svoboda.

The applicant and the respondent have reached agreement as to the way in which, in their view, the will

ought be amended to allow for further and better provision for the applicant. The parties have entered into a deed of agreement, the principal effect of which is to protect the interest of children of the respondent who have a contingent entitlement to some of the residuary estate. Mr Sparkesman has considered the provisions of the will and the deed and expressed the opinion that the deed is not to the detriment of Helen and Solan Svoboda and is, in fact, more beneficial to them than the provisions of the will.

The size of the estate was approximately \$1.25 million at the date of death of the testatrix. The applicant's financial circumstances are relatively modest and she has particular vulnerability of an economic nature due to her ill health and diminishing prospects of employment. She has no children. She is now 41 years of age and her husband is some 30 years her senior.

I am satisfied that further provision ought be made for the applicant out of the estate. I am further satisfied that the alterations to the effect of the will and, in consequence, the further distribution to be made to the applicant in consequence of the draft order, which has been provided to me, and the terms of the deed are fair and reasonable. The terms of the proposed settlement will have the effect of depriving the children of the respondent of a contingent interest in the capital of 30 per cent of the balance of the residue set aside under clause 1(c) of the will. However, having regard to the terms of the deed, I do not consider that to be an impediment to the making of an order in terms of that initial deed and place with the papers -----

MRS MULLINS: I could hand you up another copy of the order because the other copy is with the deed. I just pointed out to my instructing solicitor in that draft order it has the orders are made by consent. I don't think that can be done strictly. I think "by consent" should be deleted.

HIS HONOUR: I will delete that. I make an order in those terms.