

THE HIGH COURT

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1981 No.837 Sp

IN THE MATTER OF THE ESTATE OF JULIA MURTAGH DECEASED
AND IN THE MATTER OF THE SUCCESSION ACT, 1965

BETWEEN/

EILEEN MAGUIRE

plaintiff

and

SHEILA MCGREEVY AND FRANCIS J. REILLY

Defendants

Judgment delivered by O'Hanlon J., the 26th July, 1983.

This is a claim by the Plaintiff under Section 117 of the Succession Act 1965. As a daughter of Julia Murtagh deceased, she claims that her mother failed in her moral duty to make proper provision for the Plaintiff in accordance with her means, whether by will or otherwise, and she asks the Court to order that such provision shall be made for her out of the estate of the deceased as the Court thinks just.

The family circumstances may be stated briefly. Julia Murtagh, the deceased named in the title of the proceedings, was the widow of Matthew Murtagh, whom she married in the year 1926. There were four children of the marriage - William, born in 1927; Eileen (the Plaintiff), born in 1929; Matthew, born in 1931, and Sheila (the first-named Defendant), born in 1940.

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Matthew Murtagh Senior died in 1964, leaving his house and lands (which formed the bulk of his estate) to his widow, Julia.

The family holding was a small one, comprising only a cottage and about ten acres of land near Athboy, Co. Meath. However, the father with the assistance of his two sons, also developed a haulage business and this enabled them to live in modest comfort when added to such income as they could derive from their farming operations.

In the course of time the Plaintiff, who had received secondary school education, went on for nursing and became a qualified nurse. Shortly afterwards she married and went to live in England. Her father died in 1964; her brother Matthew in 1975; her brother, William, in February, 1980, and her mother, Julia Murtagh, on or about the 12th May, 1980.

This meant that at the date of death of Julia, her husband had already predeceased her, as had also her sons Matthew and William, and her only remaining close family ties were with her two daughters the Plaintiff and the first-named Defendant.

Julia's estate consisted of the family holding at Trim Road, Athboy; about £1,600 cash in the bank; £600 grazing rent due,

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and little else of value. The debts were of no great significance, but funeral and testamentary expenses will, of course, have to be provided for.

At the time of her death, both daughters were married and living away from the family home. The Plaintiff's husband was employed in clerical work with IBM in London for about 14 years up to the date of death of Julia Murtagh. It was secure employment, but he had been dogged by ill-health for much of his working life, with serious conditions affecting his spine and kidney. He had undergone several operations and at one time was out of work for over a year by reason of his illness.

The Plaintiff kept on her work as nurse, as well as minding her husband and the three children of their marriage. As far as her mother could have known, the Plaintiff's family must have seemed to be in fairly comfortable circumstances, with both husband and wife in employment, but Julia Murtagh should also have been conscious of the hardship and difficulties caused for her daughter by the recurrent illnesses of the Plaintiff's husband. He is now 56 years of age and it appears that he will have to retire prematurely from his employment due to ill-health

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and on a reduced pension.

When Julia Murtagh deceased came to make her last Will, dated 5th September, 1977, she gave a legacy of £3,000 to the Plaintiff, and the remainder of her estate (subject to two small legacies for Masses) to her other daughter, the first-named Defendant.

Some five weeks later she made a codicil to her Will the sole purpose of which was to reduce the amount of the legacy given to the Plaintiff from £3,000 to £200.

Her estate was valued for probate purposes at a net value of £37,021.36 but the Plaintiff claims that the market value of the family holding is and was well in excess of that figure and a valuer's evidence put the present value of the house and lands at £45,000 while it remains zoned for use as an agricultural holding only, but at £70,000 if planning permission could be obtained to develop the lands for building purposes.

I am satisfied on the evidence which has been given in the course of the case that both daughters were good to their mother and looked after her as much as their own family circumstances would permit so that there was no reason for her

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to mark her displeasure or dissatisfaction with either of them by a deliberate decision to leave them nothing or virtually nothing under her Will.

I have been referred by Counsel to a number of decided cases on the correct principles to be applied by the Court when dealing with applications under Section 117 of the Succession Act, and in particular the decision of Kenny J. in F.M. .v. T.A.M. & Ors., 106 ILTR 82, and of Keane J. in J.R. .v. J.R., (Record No. 1978 No.661 Sp., Unrep. delivered the 13th November, 1979) where the facts and circumstances of the parties were not unlike those prevailing in the present case.

I accept that the Court should not use the provisions of Section 117 for the purpose of making a new will for a testator merely because it disapproves of the manner in which some child or children has or have been treated in the disposition of the available assets.

In the present case the two children of the testatrix who were still surviving at the time of her death were each grown up, had married, and had children of their own by the time she died. Neither could be said to have been in want and when the



Plaintiff's husband was in full employment and in good health he was able to earn a sum in the region of £150 per week (sterling). At the same time, the outgoings on mortgage repayments and rates were heavy, and the recurring episodes of serious ill-health which beset the Plaintiff's husband made their financial position precarious, and made it necessary for the Plaintiff to continue with her nursing work while striving to rear a family at the same time.

I think these are all matters to which the testatrix should have had regard when making her Will, and I think she did so and was motivated by such considerations when initially giving the Plaintiff a bequest of £3,000. Something inspired her to change her attitude towards the Plaintiff between that time and the making of the codicil five weeks later which, to all intents and purposes, cut the Plaintiff out of the Will.

The testatrix was very advanced in years when she made her Will and codicil. She was eighty years and upwards when she died, and the evidence suggests that with the onset of old age she became very cantankerous and difficult to deal with in many ways. She may well have become senile. She started some form of litigation against one of her sons in the year 1977, and the

Plaintiff wrote to her sister saying that their mother was mad, or not in her right mind, or using some expression to the same effect. The first-named Defendant imprudently and unkindly showed this letter to her mother, and I have no doubt that this provoked a strong reaction in the testatrix against the Plaintiff and may well have brought about the change of heart manifested in the provisions of the codicil to her Will.

Whatever the reason, it appears to me that the testatrix in disposing of her estate failed to have due regard to the circumstances of the Plaintiff, her daughter, living on a disposable income of very modest proportions and married to a husband whose role as bread-winner was at all times jeopardised by his previous history of ill-health. The first-named Defendant to whom almost the entire estate was left by the provisions of the Will and codicil, was married to a CIE bus driver and was not in such needy circumstances as would objectively justify the decision to give her everything and to disinherit the only other surviving child of the testatrix.

For these reasons I have come to the conclusion that the testatrix lost sight of a moral duty which she did owe to the Plaintiff, who seems to have been a good and dutiful daughter

to her, to make some reasonable provision out of her estate to help to ease the financial situation of that daughter.

I respect the right of the testatrix to favour one daughter over the other in the dispositions she made by her Will, and I direct that a sum of £8,000 should be provided out of the estate for the benefit of the Plaintiff, to include the legacy of £200 already bequeathed to her under the Will and codicil. I further direct that all parties shall be entitled to their costs out of the estate, the same to be taxed in each case as between solicitor and client. As payment of the sum which I have directed to be provided out of the estate in favour of the Plaintiff may be delayed while the family holding is being sold or while a loan is being arranged on the security of same, I further direct that the sum of £8,000 which is payable to the Plaintiff shall carry interest from today's date until payment at the rate of 12½% per annum.

Approved.

R. J. O'Hanlon.
R.J. O'Hanlon.
26th July, 1983.

NOTE:

Counsel for the Plaintiff:- Tony Aston BL (instructed by Wm. Fry and Sons, Solicitors).

Counsel for the Defendants:- Edmund Honohan B.L. (instructed by D.J. Reilly and Co., Solicitors).

Cases cited:-

F.M. .v. T.A.M. 106 ILTR82

J.R. .v. J.R. (Keane J. unrep. 13/11/1979)

M.S.N. Deceased 107 ILTR

J.H. AND C.D.H. .v. A.I.B. (McWilliam J. unrep. 17/11/1978).

Woods .v. Dowds (Parke J. unrep. 28/5/1975).

Bray .v. Bray (Hamilton J. unrep. 25/2/1977).