



For a Better Result.....

Why You Need To Be Careful With Your Will

The recent decision of *Nofz Kane and others* 2015 QSC 372 makes it very clear the importance of drafting your Will properly and also the importance of regular review.

Henry Fitzgerald passed away on 24 February 2014 leaving an approximately 1.9 million dollar estate.

He left a Will dated 5 May 2011 but some of the gifts were uncertain because of the following;

- One of the beneficiaries was named in the Will as Tammy Ritchies. There was no such person. There was however, his goddaughter Tania Marie Richards.
- Further, the Will made some requests to charitable organisations which no longer existed.

Pursuant to the Trusts Act 1973 (Section 96) the trustee of an estate can apply to the Court for Directions about how to make payment.

After hearing evidence, the Judge was satisfied that Ms Richards should take the gift referred to in the Will.

One of the Respondents was the Roman Catholic Trusts Corporation for the Diocese of Cairns.

The Court found that under *Section 33C of the Succession Act*, it was possible for evidence of the testators intention to be admitted and so further evidence was submitted about that.

It was on this basis that the Court had approved the gift to Ms Richards but that it also considered the history of the Church and whether the Diocese was properly described as Cairns or whether it was possible some other charitable organisation which no longer existed.

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The Court discussed circumstances where a gift to an organisation that no longer exists may in fact still apply and once of these is where there is an institution that takes over the work previously carried on by the institution named in the Will.

Ultimately, the Court decided that the Diocese was the appropriate entity to receive the gift and made such Orders.

Unfortunately for the estate, the application and all enquiries that were made would have resulted in an expenditure of many thousands of dollars which could have been avoided if at the time of drawing the deceased Will, proper enquiry was made or alternatively the deceased had regularly reviewed his Will to ensure that matters were up to date and that he had properly named persons who he intended to benefit from his Will

For more information about your Will, please contact *Robert Bakker*

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