

*Mamone & Ors v Gagliardi* [2000] NTSC 51

PARTIES: MAMONE, Antoinette, BLAIKLOCK, Maria  
and GAGLIARDI, Elena

v

GAGLIARDI, Jesse Aaron

TITLE OF COURT: SUPREME COURT OF THE NORTHERN  
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN  
TERRITORY EXERCISING TERRITORY  
JURISDICTION

FILE NO: 31 of 2000

DELIVERED: 30 June 2000

HEARING DATES: 18 May 2000

JUDGMENT OF: MARTIN CJ

**CATCHWORDS:**

SUCCESSION

Wills, probate and administration – whether caveator has an interest in the estate.

*Administration and Probate Act* 1969 (NT), s 44 and Pt I, Sch 6

*Supreme Court Rules* 1987 (NT), r 88.70, r 88.70(4), r 88.62 and r 88.64.

**REPRESENTATION:**

*Counsel:*

Applicant: J Stirk  
Defendant: G Wilson

*Solicitors:*

Applicant: Povey Stirk  
Defendant: Clayton Utz

Judgment category classification: B  
Judgment ID Number: mar20015  
Number of pages: 3

Mar20015

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*Mamone & Ors v Gagliardi* [2000] NTSC 51  
No. 31 of 2000

BETWEEN:

**ANTOINETTE MAMONE, MARIA  
BLAIKLOCK and ELENA GAGLIARDI**  
Applicant

AND:

**JESSE AARON GAGLIARDI**  
Defendant

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 30 June 2000)

- [1] Application by the executors named in the will of the late Maria Concetta Gagliardi executed on 6 August 1998, who died in September 1998, that a caveat lodged by the defendant on 14 February 2000 demanding that no grant of representation be made cease to have effect, *Supreme Court Rules* 1987 (NT) r 88.70.
- [2] The entitlement of a person to lodge a caveat under s 44 of the *Administration and Probate Act* 1969 (NT) is expressed to be subject to the Rules. Rule 88.62 provides that a person claiming to have an interest in the estate may lodge a caveat. On this application the Court may make the order sought if it considers that the evidence does not show:

- (a) that the caveator has an interest in the estate or has a reasonable prospect of establishing such an interest; and
- (b) some matter occasioning doubt as to whether the grant ought to be made (r 88.70(4)).

- [3] There are other caveats lodged. In every case the caveator claims to be a beneficiary and grandchild of the deceased. The defendant is a child of a child of the deceased who predeceased her. It appears that those earlier caveats ceased to have effect after six months (r 88.64).
- [4] As to the interest in the estate claimed, the defendant says that he has seen a previous will of the deceased and says that by it she had left her estate equally between her seven children, or in cases where any such child had passed away, she had left the deceased child's share of the estate to that child's children, that is, the grandchildren. The will, of which the plaintiffs are joint executrix, does not benefit those grandchildren. There is no other evidence of the earlier will and nothing is disclosed as to any efforts to locate it. In a written submission after the hearing, the defendant's solicitors in Darwin said that they had been instructed that former wills of the deceased were in existence. That is not evidence, and in any event does not show that the defendant was a beneficiary.
- [5] In the absence of the document, or any evidence showing it could be found, I cannot be satisfied that the defendant has an interest in the estate under the earlier will or has reasonable prospects of establishing such an interest.

- [6] In the course of the submissions upon the hearing, counsel for the defendant said that her client claimed an interest in the estate under intestacy. I take that to be an alternative submission to that based upon the existence of an earlier will. The deceased had predeceased her husband Guiseppe Gagliardi. Part I of Schedule 6 to the *Administration and Probate Act* provides that where an intestate is survived by a spouse, then the spouse is entitled to the whole of the intestate estate if its value does not exceed the prescribed amount. That amount as at the date of death of the deceased, 13 September 1998, was \$60,000. If the estate exceeded that value, then the defendant would have an interest as issue of the deceased. But there is no evidence as to value. I am therefore unable to consider that they have an interest.
- [7] Order that the caveat cease to have effect and that the defendant pay the plaintiffs costs.
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