

CITATION: *In the Estate of Gilmartin* [2019] NTSC 90

PARTIES: IN THE ESTATE OF GILMARTIN

ON REFERENCE from the Registrar of the
Supreme Court of the Northern Territory

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 75 of 2019 (21820665)

DELIVERED: 30 December 2019

DELIVERED AT: Darwin

JUDGMENT OF: Kelly J

CATCHWORDS:

SUCCESSION – WILLS, PROBATE AND ADMINISTRATION –
PROBATE AND LETTERS OF ADMINISTRATION

Reference by the Registrar pursuant to s 17(2)(c) of the *Administration and Probate Act 1969* (NT) – whether administration should be granted – order that the Registrar may grant administration of the estate to the applicant.

Administration and Probate Act 1969 (NT) 22(1)(d), sch 6

Judgment category classification: B

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

In the Estate of Gilmartin [2019] NTSC 90
No 75 of 2019 (21820665)

IN THE ESTATE OF GILMARTIN

**ON REFERENCE FROM THE
REGISTRAR OF THE SUPREME
COURT OF THE NORTHERN
TERRITORY**

CORAM: KELLY J

REASONS FOR ORDER

(Delivered 30 December 2019)

- [1] The deceased, Patrick Joseph Gilmartin, died intestate on 7 March 2018 leaving an estate with a gross value of approximately \$1.4 million.
- [2] The death certificate recorded the deceased having no children and noted a de facto relationship with Ms Rita Ann Kear.
- [3] The names and ages of and relationship to the deceased of the next of kin of the deceased, as defined in the *Administration and Probate Act 1969* (NT) (“the Act”), are his siblings, John Charles Gilmartin (aged 66), Helen McLean (aged 76), and Anne Gorman (aged 74).
- [4] Ms Rita Ann Kear claimed that she was the de facto spouse of the deceased. She also survived the deceased. She was aged 83 at his death.

- [5] On 10 May 2018 the deceased's brother, John Charles Gilmartin, lodged a caveat over the estate on the basis that Ms Rita Ann Kear was not the de facto partner of the deceased at the time of his death.
- [6] On 17 May 2018 Ms Rita Ann Kear also lodged a caveat over the estate of the deceased claiming that she was his de facto spouse.
- [7] On 31 August 2018 Ms Rita Ann Kear lodged an application for administration of the deceased's estate to be granted to her. That application could not proceed until after both caveats were withdrawn or naturally lapsed.
- [8] On 2 November 2018, before the lapse of those caveats, Ms Rita Ann Kear died. Ms Kear left a will appointing her son, William Edward Kear, as her executor and leaving her estate in equal shares to her three children, William Edward Kear, Colin David Kear and Joy Patricia Kear.
- [9] On 21 December 2018 probate of the will of Ms Kear was granted to William Edward Kear.
- [10] The probate documents lodged by William Edward Kear regarding the estate of Rita Ann Kear do not refer to any interest in the estate of Patrick Joseph Gilmartin.
- [11] Before Ms Kear died, no evidence had been filed addressing the question of whether Ms Kear was the de facto spouse of the deceased.

[12] On 25 October 2019, William Edward Kear lodged an application for a grant of administration of the estate of Patrick Joseph Gilmartin in his capacity as executor of the estate of the late Rita Ann Kear.

[13] The siblings of the deceased and Mr William Edward Kear, in his capacity as executor of the will of Ms Kear, have reached agreement about distribution of the estate and entered into a Deed of Settlement (“the Deed”). Under the Deed, the parties have agreed that each of the deceased’s siblings and the estate of Ms Kear will receive $\frac{1}{4}$ of the net value of the deceased’s estate; that the siblings agree to Mr William Kear applying for letters of administration and administering the estate; and that the reasonable legal costs of the parties be paid out of the estate.

[14] Because of the above complications, and the fact that Mr William Kear’s application for letters of administration did not clearly identify whether he had standing to apply for a grant of administration of the deceased’s estate, the Registrar referred to matter to the Court for consideration.

[15] Section 22 (1)(d) of the Act provides that the Court may grant administration of the estate of an intestate person to such person, whether a creditor or not of the deceased person, as the Court thinks fit.

[16] Under Schedule 6 of the Act, the only people who would have been entitled to a distribution of the deceased's estate are the estate of Ms Kear (if she was the de facto spouse of the deceased) and/or the deceased's siblings.¹

[17] In the circumstances outlined above, where every person with a potential interest in the estate has agreed both on the way the estate should be distributed, and that the applicant, Mr William Kear should apply for letters of administration and administer the estate, in my view it would be appropriate for administration of the estate to be granted to Mr William Kear.

[18] ORDER: Subject to any formal requirements of the Probate Registrar, letters of administration of the estate of Patrick Joseph Gilmartin (deceased), be granted to the applicant, Mr William Edward Kear.

¹ Whether the de facto spouse receives the whole of the estate or the next of kin receive part depends on the nett value of the estate.