

Mamone & Ors v Gagliardi & Ors [2000] NTSC 50

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

v

GAGLIARDI, Jesse Aaron, GAGLIARDI,
Shane Joseph, GAGLIARDI, Justine Ellenrose,
PODUTI, Steven Venturino, DRUSETTA,
Jenny, PODUTI, Josephine and CAMPAGNA,
Ricky Patrick

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN
TERRITORY EXERCISING

FILE NO: 30 of 2000 (200053340)

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 s 68, Pt I, Sch 6.
Supreme Court Rules 1987 (NT), r 88.62, r 88.70, r 88.70(4) and r 88.70(5).

REPRESENTATION:

Counsel:

Applicant: J Stirk
Defendants: G Wilson

Solicitors:

: Povey Stirk
Defendants: Clayton Utz

Judgment category classification: B
Judgment ID Number: mar20014
Number of pages: 4

Mar20014

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

Mamone & Ors v Gagliardi & Ors [2000] NTSC 50
No. 30 of 2000 (200053340)

BETWEEN:

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

AND:

**JESSE AARON GAGLIARDI, SHANE
JOSEPH GAGLIARDI, JUSTINE
ELLENROSE GAGLIARDI, STEVEN
VENTURINO PODUTI, JENNY
DRUSETTA, JOSEPHINE PODUTI and
RICKY PATRICK CAMPAGNA**
Defendants

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 30 June 2000)

- [1] Application by the executors named in the will executed on 18 February 1999 by Guiseppe Gagliardi, who died on 15 December 1999, for an order that a caveat lodged by the defendants on 14 February 2000 demanding that no grant of probate 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 an 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] As to the interest in the estate claimed, the defendants say that they are beneficiaries and grandchildren of the deceased, that is, children of children of the deceased who predeceased him. That is not in dispute. The defendant, Shane Joseph Gagliardi says that in about March 1999 he was told by the first named plaintiff that the deceased had changed his will, meaning one executed prior to 18 February 1999. Another defendant, Jesse Aaron Gagliardi says that the deceased told him in early 1999 that he had left him by his will the Cavalleri medal awarded to the deceased, and that the deceased had changed the beneficiary at the wish of the first plaintiff.
- [4] There is no other evidence of any will and nothing is disclosed as to any efforts to locate it. In a written submission after the hearing, the defendants' solicitors, in Darwin, said that they had been instructed that former wills of the deceased are in existence. That is not evidence, and in any event, does not show that the defendants are beneficiaries.

- [5] In the absence of the testamentary documents or any evidence showing that they, or any of them could be found, and thus proved, I cannot be satisfied that the defendants had a interest in the estate under the earlier will or wills, nor had they reasonable prospects of establishing such an interest.
- [6] In the course of submissions at the hearing, counsel for the defendants said that her clients claimed an interest in the estate under intestacy. I take that now to be an alternative proposition to claiming an interest under former will or wills. As at the date of his death, Part IV of Schedule 6 to the *Administration and Probate Act* provides that when the intestate is not survived by a spouse, but is survived by issue, then the issue are entitled to the whole of the estate. The deceased's wife predeceased him. The issue of each of the children of the intestate who died before the intestate are issue of the intestate for these purposes, s 68. I consider that each of the defendants have an interest in the estate should their attack upon the will in question here be successful.
- [7] Is there some matter occasioning doubt as to whether the grant ought to be made? Shane Joseph Gagliardi and Jesse Aaron Gagliardi, are two of the defendants, and sons of the later Peter Gagliardi, a son of the deceased who predeceased him. They both speak of deterioration in the deceased's state of health, including his mental health over the years prior to his death, particularly related to the period during which he executed the will. They also point to the relationship between the deceased and the first named plaintiff, upon whom they suggest he came to rely to the extent of not being

able to resist her wishes. It is also asserted that she exerted influence over the deceased by telling him that the grandchildren had no respect for him.

[8] The plaintiffs have not sought to rely on any evidence in this application.

The two matters raised by the defendants occasion doubt as to whether the grant of probate ought to be made. That is all the rule requires to refuse the plaintiffs application. I so order. The question of costs is adjourned.

[9] I will hear the parties as to the directions best adapted for the just, quick and inexpensive determination of what grant, if any, should be made in the estate, and of related matters (r 88.70(5)).
