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When family law intersects with a deceased estate – case review

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There are several important considerations relevant to the administration of a deceased estate after someone dies. One of those is how other areas of law may intersect with estate law, creating some complexities when administering the estate. This blog is a case review that explores the Federal Circuit and Family Court's ("the Family Court") decision on legal capacity of the deceased and how that impacted the surviving partner's eligibility as a beneficiary under the Will.

Further reading on the intersection of other areas of law can also be found in our earlier blog, "High Court determines meaning of breakdown of de facto relationship". In that case, there was significant importance placed on when a de facto relationship begins and ends, in order to determine whether a de facto partner may be a beneficiary.

Deceased estate of Lyden – legal capacity in dispute regarding legality of the marriage

Mr Lyden and Ms Lyden married in 2007 until Mr Lyden's death in 2018. The couple had known each other for many years prior to their marriage, having first met in 1985.

Concerns regarding the deceased's neurological health manifested in early 2007. Prior to 2007, Ms Lyden noticed the deceased would forget small things such as 'where he had put his keys or misplacing his toothbrush'.

In early 2007, the deceased was diagnosed with Bensen's Syndrome (a variant of Alzheimer's disease). Benson's Syndrome was described to the deceased as "a form of dying of the brain". At that time, it was estimated Mr Lyden had approximately 10 years of life left.

The deceased wrote a Will in early 2007

The deceased's final Will was executed in February 2007, around the same time that he received the Bensen's diagnosis.

However, the final Will was prepared in advance of the wedding and "in contemplation of marriage". Wills that are executed in this way prevent revocation of a final Will in the event of marriage.

In this case, the Family Court did not consider legal capacity issues in the context of the Will or other testamentary documents. However, the effect of the court's decision impacted upon the estate's administration.

Family members seek to have the marriage declared void

In *Alford & Lyden* (February 2021), the Applicants (relatives of the deceased) applied for a declaration that the marriage is void and sought a continuance of interim injunctions preventing Ms Lyden from dealing with the proceeds from the estate.

Decision of the Family Court

The Family Court determined the marriage between the deceased and Ms Lyden in 2007 was void. The Family Court made this decision on the basis of the evidence presented. The court determined Mr Lyden did not understand the nature and effect of the marriage ceremony. It assessed Mr Lyden's capacity from the date of marriage in April 2007, relying on medical evidence from that time.

Although the Family Court was satisfied, on balance, that the deceased knew he was going to marry Ms Lyden as of February 2007 and subsequently made several bequests in Ms Lyden's favour in the final Will, the court was **not** satisfied that Mr Lyden understood the nature and effect of the marriage ceremony.

The Family Court accepted medical evidence that made an interesting distinction between the kinds of decisions that inform whether an individual meets the standard of legal capacity in the context of marriage.

In particular, the court highlighted a report from the deceased's primary doctor who identified that although the deceased had the ability (or capacity) to understand and make his own decisions about basic lifestyle choices, including finances, these were different and separate to "complex decisions".

The doctor explained the distinction as follows:

> "A simple decision *would be one requiring the adult to consider choices about [day-to-day] life whereas a complex decision would require the adult to c*onsider choices which may have long term consequences."

Complex decisions require one to consider effects for a much longer period of time as opposed to consequences of "simple decisions" which might go unseen and are less onerous or impactful.

Thus, on balance, the Family Court's acceptance of the medical evidence led to the conclusion that the deceased did not have the

capacity required to lawfully or validly enter into marriage with Ms Lyden.

The result of the Family Court's decision was a declaration that the marriage in April 2007 was void.

Family members seek orders to have estate distributions to Ms Lyden returned to the estate

After the Family Court declared the marriage void, family members of the deceased sought orders that Ms Lyden pay monies she received from the deceased's superannuation fund, in excess of $2 million dollars, to the Applicants (the representatives of the deceased's estate) and transfer property purchased with the superannuation funds to the Applicants.

Though the Family Court judgment refers to the Applicant's relatives seeking orders for these things, we have not been able to verify a Supreme Court case in Australia that deals directly with this, but it does raise important questions for lawyers.

Significance to estate planning matters

This case is an important illustration of how legal capacity issues can crop up in other legal jurisdictions when administering a deceased estate. There are many life decisions that (in the eyes of the law) require legal capacity in order to maintain validity.

The rationale for this is varied, but capacity concerns are rooted in ensuring the individual making the decision is fully and completely informed. As Mr Lyden's doctor pointed out, different decisions have different consequences, and for those decisions that may produce long term consequences, it is imperative that those decisions are made with total comprehension, understanding, and appreciation.

The decision in the Family Court also raises questions to assess potential issues for estate lawyers and their clients, including:

- whether a deceased's Will is valid;
- whether a death benefit is valid;
- whether a death benefit follows the decision of the trustee in deciding that the benefit be paid; and
- What rights a widow might have in the event marriage is determined to be invalid.

This decision highlights issues lawyers and clients might need to consider if and when preparing to seek orders in a court with respect to contesting a Will.

Get help from a Wills and estates lawyer

Capacity considerations are significant in estate administration and are often the basis for challenging a Will. As a result, estate administration can quickly become complicated.

IM Lawyers can provide you with the right advice about your legal rights and options. We are here to alleviate the stress and avoid issues when it comes to Will challenges or issues surrounding estate administration.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.