

# SUPREME COURT OF QUEENSLAND

CITATION: *Stewart v Stewart* [2015] QSC 238

PARTIES: **MICHAEL ROBERT STEWART**  
(applicant)  
v  
**CATHERINE ANN STEWART (AS EXECUTOR OF  
THE ESTATE OF THE LATE KENNETH RAYMOND  
STEWART)**  
(respondent)

FILE NO: SC No 96 of 2014

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 26 August 2015

DELIVERED AT: Brisbane

HEARING DATE: 4 August 2015

JUDGE: Applegarth J

ORDER: **The parties submit within seven days forms of order to make further provision for the applicant, Michael Robert Stewart, out of the estate of Kenneth Raymond Stewart in the amount of \$850,000.**

CATCHWORDS: SUCCESSION – FAMILY PROVISION – REQUIREMENT FOR ADEQUATE AND PROPER MAINTENANCE – WHETHER APPLICANT LEFT WITH INSUFFICIENT PROVISION – CLAIMS BY CHILDREN – where applicant is son of deceased – where deceased did not provide for applicant in his will – where deceased's will appointed applicant's mother as executor and sole beneficiary – where applicant suffers from mental illness and lacks stable accommodation – where deceased did not make adequate provision for proper maintenance and support of applicant – what provision should be made for his proper maintenance and support – whether the provision should be by way of a protective trust

*Succession Act* 1981 (Qld), s 41(1)

*Bondy v Vavros* (Supreme Court of NSW, Young J, 29 August 1988, unreported), cited

*Daley v Barton* [2008] QSC 228, cited

*Hampson v Hampson* [2010] NSWCA 359, cited

*Lowe v Lowe* [2014] NSWSC 371, cited  
*McCosker v McCosker* (1957) 97 CLR 566, cited  
*Poole v Barrow* [2014] VSC 576, cited  
*Pozzino v Pozzino* [2010] QSC 35, cited  
*Singer v Berghouse* (1994) 181 CLR 201, applied  
*Vigolo v Bostin* (2005) 221 CLR 191, applied

COUNSEL: C A Brewer for the applicant  
D B Fraser QC for the respondent

SOLICITORS: Wilson Ryan Grose for the applicant  
Connolly Suthers for the respondent

- [1] The applicant, Michael Stewart, is the son of the late Kenneth Stewart, who died on 11 August 2013, leaving an estate of approximately \$2.2 million. Michael Stewart was left nothing in his father's will. His circumstances are dire. He suffers chronic post-traumatic stress disorder and other mental illnesses as a result of his 21 years' service as a police officer in Victoria. He has been living in a car and in other unsatisfactory accommodation since February this year. As a result of his mental illness he has trouble maintaining relations. He has obligations to two teenage sons. Although he receives a disability pension, it has not been enough to meet his expenses, and he has substantial unpaid debts. He has reached the limits on his credit cards. He has insufficient income or wealth to secure accommodation so as to stabilise his personal life and to pay his debts.
- [2] Although Kenneth Stewart told his son that he would be well looked after in his will, he made no provision for his son. The only will he apparently left was made on 3 May 1973. It and a codicil of 14 March 1974 appointed the respondent, Catherine Stewart, as sole executor and beneficiary.
- [3] Ten years after making that will, Kenneth<sup>1</sup> and Catherine separated permanently. There was a property settlement between them in 1986.
- [4] Kenneth and Catherine also had a daughter, who is now an adult and who makes no claim on her father's estate.
- [5] Catherine is aged 67 and has assets totalling about \$842,000. She is on leave from her employment in Victoria, and does not propose to return to it. She receives dividend payments from shares of about \$12,000 per annum.
- [6] Michael's present parlous circumstances are largely the result of his unemployment, some financial imprudence and failed relationships. But these, in turn, are largely the result of his mental illness. This is not a case in which the application for provision fails at the threshold because it was appropriate to provide nothing in a will to a spendthrift adult child who had been given ample financial assistance during the testator's lifetime. There is no real contest that, due to Michael's psychological condition, the jurisdictional threshold is satisfied. As a matter of objective assessment, and having regard to the moral

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<sup>1</sup> I adopt the first names of the deceased and the parties, as did the parties' written submissions.

claim which Michael had upon his father's estate, Kenneth did not make adequate provision for the proper maintenance and support of his son.

[7] The substantial issues are:

- what is necessary to provide adequate maintenance and support for Michael;
- the form that provision should take, including whether his need for secure accommodation is best met by the acquisition of a home or the granting of a life interest in one; and
- whether there should be a trust to protect the capital that is awarded to Michael.

### **The law**

[8] Section 41(1) of the *Succession Act* 1981 (Qld) empowers the court to make provision for an eligible person out of a deceased's estate in an amount to be determined by the court in its discretion. The two stage process the court must follow in deciding an application under this section was affirmed by the High Court in *Vigolo v Bostin*.<sup>2</sup>

[9] The first question is whether the deceased made adequate provision for the proper maintenance and support of the applicant. This is a question of objective fact assessed at the date of the testator's death. If the provision is found to be inadequate, then the jurisdiction of the court to make an order for further provision under part 4 of the Act is invoked.

[10] If the preliminary question is resolved in the applicant's favour, the court then determines what amount of provision should be made for the proper maintenance and support of the applicant by assessing the applicant's circumstances at the date on which the application is heard.

[11] Similar considerations arise in the determination of each question. The adequacy of the provision (if any) is assessed by considering what proper maintenance and support the applicant requires. Proper maintenance of the applicant means "proper in all the circumstances of the case".<sup>3</sup> Similarly, the adequacy of any provision made "is not to be decided in a vacuum ... [it] will depend upon all of the relevant circumstances".<sup>4</sup> It is not necessary for the applicant to be in straitened financial circumstances in order for a "need" for further provision to arise. Rather, "need" may be assessed by considering the applicant's:

- financial position;
- lifestyle and general expectations in life; and
- health.

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<sup>2</sup> (2005) 221 CLR 191 "*Vigolo*".

<sup>3</sup> *McCosker v McCosker* (1957) 97 CLR 566 at 571 – 572; *Vigolo* at 200 – 201.

<sup>4</sup> *Vigolo* at 231.

- [12] Although the threshold question about the adequacy of any provision is to be resolved on an objective basis, that determination also necessitates consideration of any moral claims the applicant may have to the deceased's estate by having regard to, amongst other things:
- the totality of the relationship between the applicant and the deceased;<sup>5</sup>
  - the size and nature of the estate, the number of competing claims upon the estate and the merits of those claims;<sup>6</sup>
  - the standard of living of the applicant during the deceased's lifetime;<sup>7</sup> and
  - any assistance, financial or otherwise, rendered by the applicant to the deceased or by the deceased to the applicant.
- [13] If inadequate provision was made for the applicant, then the court determines what amount the applicant should properly receive from the deceased's estate. This requires the court to exercise its discretion in determining what provision a "wise and just testator"<sup>8</sup> would have made in the circumstances. In exercising its discretion, the matters already considered in connection with the adequacy of any provision become relevant to the determination of what provision should be made.

## Background

- [14] Catherine was born in 1947 and gave birth to Michael in 1965. She married Kenneth in 1968, and he adopted Michael in about 1970. In 1971 Kenneth and Catherine had a daughter. As noted, the 1973 will left all of Kenneth's estate to his wife.
- [15] The couple had very different personalities and were rather incompatible. They separated in about 1983, when Catherine moved out of their home in Bowen and moved to Townsville. The separation was a permanent one.
- [16] Catherine initially stayed at her mother's house in Townsville. In about 1986 she and Kenneth reached a property settlement which was sanctioned by the Family Court and which gave Catherine some financial independence. In 1987 she purchased a property in Townsville out of the proceeds of the property settlement.
- [17] Catherine's evidence is that, notwithstanding their physical separation and the financial settlement, the relationship between her and Kenneth "continued without change". I am unable to accept this. They had an unusual relationship. Kenneth remained on good terms with Catherine's mother and he would visit Catherine's family in Townsville. He would also see her, but they did not live together, as husband and wife, in either Bowen or Townsville. Catherine provided some assistance to Kenneth when she would visit Bowen on occasions, or arrange for equipment required for Kenneth's taxi to be repaired in Townsville and transported to him. They spent some time together and once went on a holiday with Catherine's parents. However, Catherine correctly declared to social security authorities that she was separated. The fact that she and Kenneth generally had

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<sup>5</sup> Ibid at 219, 231.

<sup>6</sup> *Singer v Berghouse* (1994) 181 CLR 201 at 209 – 210.

<sup>7</sup> *Daley v Barton* [2008] QSC 228 at [150].

<sup>8</sup> *Singer v Berghouse* (1994) 181 CLR 201 at 209; *Vigolo* at 200 – 201.

civil communications when they were in each other's company does not alter this fact. Although Catherine's parents gave affidavit evidence that Catherine and Kenneth held themselves out as husband and wife, other evidence, including evidence from a good friend of Kenneth, Kenneth's brother and Catherine's sister casts doubt on the warmth of the relationship between Catherine and Kenneth. There is no evidence that Catherine cared for Kenneth to any real extent during bouts of ill health which he experienced or visited him when he was hospitalised in Bowen.

- [18] Catherine accurately summarised her relationship in instructions which she gave her solicitor in 2010 in connection with the making of her own will. She instructed "still married but been separated for 30 years – did have a property settlement through the Courts". She left nothing to Kenneth. That said, he had no need for her money if she predeceased him.
- [19] In summary, the couple separated, but did not divorce. They did not live as husband and wife after 1983. The nature of their relationship was not such as to give Catherine a large moral claim upon Kenneth's estate.

### **Michael's circumstances**

- [20] Michael served in the Victoria Police Force from April 1987 to October 2008. He left that force as a result of post-traumatic stress disorder. As a result of his work-related condition he receives a disability pension of approximately \$54,000 gross per annum under an employment-related superannuation scheme. This income is indexed annually according to the Consumer Price Index.
- [21] In about 2002 Michael asked his mother to move to Melbourne. He had separated from his wife who was threatening to move overseas to live and to take their son with her. Catherine moved to Melbourne to support Michael's application for custody. As matters transpired, she remained in Melbourne for about 10 years, and took on full-time employment with the Victorian government. She decided that she wanted to return to Townsville, and did so in 2012. This was about the time that Michael split up with his then-girlfriend and moved back to North Queensland. He initially resided with his aunt then moved into a house owned by his mother.
- [22] Shortly before his father's death, the relationship between Michael and his mother deteriorated. He commenced residing with a woman, and they moved to Bowen in December 2013. Michael resided with the woman and with three children for whom she was a carer. Michael and his partner separated on 21 February 2015 when he moved out of their rented home in Bowen and commenced to live in a car. In recent months he has stayed overnight with his aunt in Townsville. He was not able to stay at her house for long periods because the activity around him caused him anxiety. In June 2015 he stayed in a caravan park in Bowen with the financial assistance of his aunt.
- [23] Michael's treating psychiatrist, Dr Jha, provided a report and gave oral evidence. Dr Jha has treated Michael on several occasions since June 2014 and has diagnosed him as suffering from recurrent depressive disorder, chronic post-traumatic stress disorder, and obsessive compulsive disorder with anxious avoidant personality traits. Michael's

condition may be exacerbated by stress and is worsened due to ongoing relationship difficulties and consequential financial hardship. Dr Jha assessed Michael as having a good insight into his condition and fair judgment. Michael's condition is assessed as being permanent but would likely show improvement if he were to live alone with appropriate support from medical practitioners and services designed to treat his condition.

- [24] Michael's illness prevents him from working in any gainful employment in the foreseeable future, and makes it unlikely that he can sustain any long-term relationship.
- [25] Despite the chronic nature of Michael's medical condition, he has made certain improvements in his life. Dr Jha gave evidence that Michael should be given recognition for the hard work that he has put in, and that Michael has demonstrated that he can learn from his past errors. Michael has stopped using alcohol completely and is compliant with his medication. He has learned to give priority to treating his medical illness and has insight into the obsessions which practically paralysed him in the past. Dr Jha's evidence, which I accept, is that Michael is much more mature now and is likely to be less impulsive.
- [26] Dr Jha was asked to consider the hypothetical situation of Michael being awarded enough money to buy a house, developing another relationship which failed and the possibility that he would lose the house. Dr Jha was confident that Michael had gradually learned from the financial risks that he had undertaken and was less likely to impulsively enter a new relationship because of his concern about his quality of life.
- [27] Dr Jha's principal concern was limiting Michael's vulnerability and observed that, in general, for patients with mental illness, the biggest hurdle is the provision of stable accommodation. He observed that housing has a major impact on patients' mental illness and that Michael's greatest need is secure accommodation.
- [28] Evidence was given about the cost of buying an established home in Bowen or a house and land package close to Bowen in an area which would be quieter and assist Michael's mental health, by removing him from close contact with sources of stress. These ranged from \$400,000 to \$580,000.
- [29] It is unnecessary to survey in detail financial transactions Michael has engaged in over the last 30 years. Substantial evidence, summarised in a schedule prepared by Catherine's lawyers, identifies gifts and loans he has received since 1983. He was dilatory in repaying some of them. He experienced financial problems as a result of a property settlement. There were occasions when he spent money on travel and jewellery for a fiancée. During periods of ill health and financial hardship he borrowed money and enjoyed the financial and other support which his mother gave him.
- [30] His income from the disability pension has been insufficient to sustain him and his dependants. He has had to resort to credit cards to meet expenses. His credit card liabilities have increased and he has had to come to an accommodation with the credit card providers. The fact that his liabilities in this regard have increased over the last few years does not prove that Michael is a spendthrift or reckless. His current liabilities of

around \$77,000 are the result of his inability to live within his limited means. Those means are very limited and consist of a gross pension payment (before tax) of approximately \$2,000 per fortnight, from which he had to find money to pay for rent, food and other necessities of life. He has a few personal effects worth less than \$10,000. He has use of a 2001 Toyota Prado and there is a dispute about whether that vehicle was gifted to him by his father or whether he simply was allowed to use it and the vehicle belongs to the estate.

[31] In summary, Michael is unable to meet his own financial responsibilities.

### **Michael's relationship with Kenneth**

[32] Michael and Kenneth lived in different parts of the country after Michael moved to Melbourne in late 1986 and commenced service in the Victoria Police Force in April 1987. Michael lived in Melbourne during this period and his father lived in Bowen. They maintained a good relationship despite this distance. Michael would regularly call his father. In December 2011 Michael visited his father for two months and spent Christmas with him and friends. They spent time together and Michael's evidence is that after this holiday he returned to Queensland so he could be closer to his father. He continued to telephone his father frequently. He told his father how his relationship with his mother was becoming irreparable such that he was unable to continue to reside in her home. Kenneth told his son that if there was anything he could do to help he would do so. He also said that Michael would be "well looked after" in his will and that Michael's sister was also included in the will "because she had to be". It is possible that Kenneth was referring to a will that was never found. However, there is evidence, consisting of conversations which Kenneth had with others, that indicate that he appreciated that he had not made provision for his son. Shortly before his father's death, Michael and his father made arrangements for Michael to move to Bowen. According to Michael, his father agreed to purchase a home for him and it also was agreed that he would take over the running of the taxi business. However, these arrangements were not finalised.

### **The size of the estate and competing claims upon the testator**

[33] As noted, the estate is worth approximately \$2.2 million. Catherine, who receives the whole of the estate under the will, is the only competing claim. She and Kenneth separated in 1983 and reached a property settlement in 1986. They were not financially dependent on each other. They remained in contact and did some favours for each other. No divorce was finalised, apparently because the parties had a dispute about who would pay the solicitor's bill to lodge the documents. Catherine did not make any significant contribution to Kenneth's taxi business while he was alive. For example, if he was away from Bowen or unwell one of the other drivers would run the business. Whilst Catherine, as executor, has operated the taxi business since Kenneth died, she had very little claim to his testamentary bounty because of any contribution to that business or any part of the estate.

[34] I conclude that her oral evidence overstated the depth of her emotional relationship with Kenneth. Catherine may be a reserved person who does not display her emotions. However, there is little evidence to suggest that she provided a high level of emotional

support to Kenneth in the many years after they were separated and, in particular, during the final period of his life when he was unwell and in hospital. Although she visited Bowen and him on occasions, she lived in Townsville. Kenneth enjoyed relations with other women and found enjoyment in the company of his mates at the pub.

- [35] In all the circumstances, including the property settlement which they reached in 1986, Catherine had a limited claim on the testator's bounty. Instead, it appears that Kenneth chose not to make a new will for one of two reasons. The first is that he intended to provide a house for his son but never did so. The second is that he was concerned about Michael's mental health, and the possible dissipation of his estate if Michael inherited substantial property and entered into imprudent transactions whilst mentally unwell. Kenneth apparently made a decision to not update his will in order to leave part of his estate to his son and daughter. Instead, he left it unchanged, expecting Catherine to leave her estate to her children.

### **The jurisdictional question**

- [36] Although the jurisdictional question was not really contested, I should state why the Court's jurisdiction is engaged. Kenneth did not make adequate provision for the "proper maintenance and support" of his son. The word "proper" in this context means proper in all the circumstances, in the light of "all competing claims upon the bounty of the testator and their relative urgency", and the testator's ability to meet such claims having regard to the size of his estate.<sup>9</sup> The adequacy of the provision made for Michael depends upon all the relevant circumstances, including the age, capacities, means and competing claims of all potential beneficiaries.<sup>10</sup> It requires account to be taken of the competing claims of Catherine and potential claims of Kenneth's daughter. Proper maintenance and support of Michael entails consideration of his health and his inability, despite his disability pension, to meet his financial responsibilities and to enjoy stable accommodation.
- [37] A hope that his son might eventually benefit by inheriting part of Catherine's estate did not meet Michael's moral claim or address the relative urgency of his need for stable accommodation and for resources to live comfortably. Because of his ill health, limited means by way of a disability support pension and unfortunate circumstances, Michael was not in a position to provide accommodation for himself and his dependants.
- [38] This is not a case where there was disentitling conduct by the applicant. Michael enjoyed a good relationship with his father. The past provision of financial and other assistance to Michael, by Catherine, Kenneth and others, is relevant. However, that financial assistance was what one might expect to be directed to a child who experienced failed relationships as a result of psychological problems and who was left with very little as a result of a property settlement with a former spouse. This case is unlike one in which past financial assistance was dissipated through gambling or frittered away by a spendthrift. In such a case one might conclude that the testator "has arranged his will in such a way as to limit the funds flowing to the plaintiff", and conclude that "the plaintiff

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<sup>9</sup> *McCosker v McCosker* (1957) 97 CLR 566 at 571 – 572, cited by Gleeson CJ in *Vigolo* at 201.

<sup>10</sup> *Vigolo* at 231 [122].

has failed to establish that there has been any breach of moral duty.”<sup>11</sup> As the written submissions made on behalf of Catherine acknowledge, despite the previous advances made to him and the receipt of a pension, Michael is ill-equipped to provide a home for himself. To the extent that his predicament is self-inflicted, as a result of his inability to maintain relationships and to sometimes take responsibility for his actions, his inability to meet his own financial responsibilities and to provide a home for himself is the result of his psychiatric condition.

- [39] Kenneth did not treat Michael as undeserving of support. Towards the end of Kenneth’s life, he was disposed to purchase a home for Michael in Bowen, and was disposed to allow Michael to use one of his vehicles. On one view, he gifted the vehicle to Michael. Kenneth went so far as to tell Michael that he would be well looked after, and Michael may have understood this to mean that he would be well looked after in Kenneth’s will. Kenneth may have meant that Michael would be well looked after if Michael’s mother chose to support him and leave substantial assets to Michael in her will. But that contingent provision of support during Catherine’s lifetime and possible future inheritance did not adequately provide for Michael’s present needs and the moral claim which he had upon his father’s sizeable estate.
- [40] I conclude that Kenneth did not make adequate provision for the proper maintenance and support of Michael.

### **What is adequate provision for Michael?**

- [41] Subject to the issue of a protective trust, adequate provision for Michael’s proper maintenance and support requires an amount which will allow him to:
- acquire or build a house in or near Bowen and to meet recurrent costs such as rates, insurance and maintenance; and
  - pay off existing debts and to provide a sum sufficient to protect against contingencies such as serious unexpected illness or some other misfortune.
- [42] Catherine’s competing claim needs to be taken into account. Although her personal relationship with, and financial independence from, Kenneth may not have been such as to give her a large claim on his bounty, her past financial and other support for Michael was and is deserving of recognition. She has substantial assets of her own, but has a need to maintain and support herself during what may be a long retirement.
- [43] I have given consideration to the question of whether adequate provision for Michael’s proper maintenance and support should be addressed by providing Michael with a life interest in a house at Bowen. In some cases, which are factually distinct from this one, an order has been made for a life interest so as to allow an applicant to live in a particular property and to guard against capital being frittered away through gambling and extravagant spending habits.<sup>12</sup> I do not consider that such a provision is necessary. Most of Michael’s past financial and personal misadventures, including his marital breakdown,

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<sup>11</sup> *Bondy v Vavros* (Supreme Court of NSW, Young J, 29 August 1988, unreported) at 10, quoted in *Hampson v Hampson* [2010] NSWCA 359 at [98].

<sup>12</sup> See for example *Poole v Barrow* [2014] VSC 576, particularly at [70] – [80].

were during a time when he was suffering undiagnosed post-traumatic stress disorder and lacked maturity. In recent times, with appropriate treatment and counselling, he has gained an insight into his condition and taken steps to address alcohol abuse. He is prepared to seek professional advice in relation to the management of an inheritance. I expect the bulk of it to be deployed in providing stable accommodation for himself. I recognise that his mental condition may make him vulnerable to impulsive financial decisions at a time of great distress. However, even during the past, Michael has not displayed pathological behaviour in dissipating all of his assets resulting in his bankruptcy. He took steps to repay many of the loans that were made to him over the years.

- [44] Stable accommodation, and with it an improvement in Michael's general health and well-being, are likely to be advanced by providing him with a home of his own, rather than a life interest in one. A life interest might insulate what would otherwise be a capital item from the risk of bankruptcy and other risks. However, regard needs to be had to the problems associated with a life interest if, at some future date, the nominated property becomes unsuitable to Michael's needs. Providing Michael with enough funds to buy a house of his own offers him the prospect of some stability and autonomy.
- [45] Even if, contrary to expectations, he forms a new relationship which later ends in tears and a claim for a property settlement by his former partner, any relationship would need to be a fairly lengthy one for the claim to be a substantial one. In such an event, it might be said that the former partner should have a claim, based upon her financial and non-financial contributions to their pool of assets.
- [46] Whilst adequate provision for Michael's proper maintenance and support must have regard to what a wise and just testator would do in order to protect his son from losing his house and other assets through misadventure or misfortune, I conclude that adequate provision for Michael's maintenance and support is best achieved by providing a sufficient amount for him to acquire his own home, and for Michael to assume the responsibility of maintaining that property.
- [47] Michael's stability is best ensured by his having sufficient funds to acquire a house which is on a large block of land, which will enable him to not come into close contact with neighbours and to enjoy a relatively quiet existence, where his anxiety is not exacerbated by noise. This may be through a house and land package. He should be provided with sufficient funds to cover contingencies associated with building and sufficient resources to maintain a property and to insure it. Although his modest disability pension might be said to provide him with a sufficient income to save enough money for recurrent expenses, such as painting, that income is best directed towards meeting ordinary expenses of living and supporting his two teenage sons, whose need for education and other support may extend well beyond the time they turn 18.
- [48] I consider that adequate provision in all the circumstances would be provided if he receives an amount of \$850,000. A sum in the order of \$600,000 is appropriate for him to acquire a property and to cover costs associated with that property, including legal fees, stamp duty, and contingencies in the building process. A sum in the order of \$250,000 will allow him to pay off debts and to retain a sufficient amount to meet recurrent expenses and contingencies and to otherwise provide him with enough upon which to live

a comfortable existence. This would include enough to meet the cost of running a vehicle and other expenses which cannot be easily met on the net amount of his disability pension.

- [49] As to the question of a vehicle, it is invidious and unnecessary to decide the question of whether the Prado was intended as a gift or a vehicle which Michael would be able to use for some indefinite period. The most appropriate course is to make specific provision for Michael to inherit it. It is worth very little. It was “given” to Michael because so little was offered to Kenneth for it as a trade-in. Michael needs a vehicle and the best course is for him to retain the Prado and for it to be transferred into his name, leaving him to assume responsibility for its registration and insurance.

### **Should there be a trust to protect the capital that is awarded to Michael?**

- [50] In some cases a court may consider that adequate provision should be made by way of a protective trust. Some of the authorities were surveyed by Hallen J in *Lowe v Lowe*.<sup>13</sup> The issue of protecting the capital awarded to an applicant was considered by Mullins J in *Pozzino v Pozzino*.<sup>14</sup> The prospect of Michael wasting the money which he is given and losing the house is a matter to take into account in deciding whether the capital sum awarded to him should be held on trust. However, I do not consider that such a course is necessary or appropriate. For the reasons which I have earlier addressed in connection with provision of a life interest, adequate provision for Michael’s maintenance and support is better achieved by providing him with sufficient assets to allow him to put a roof over his own head and to manage his own affairs and finances. He has insight into his condition and has been assessed as having fair judgment. He accepts his diagnosis and takes his medication responsibly. I do not consider that it is necessary or appropriate to provide a trust to protect the capital that is awarded to Michael.

### **Conclusion and orders**

- [51] The substance of the order which I intend to make is that further and better provision for the applicant, Michael Robert Stewart, be made out of the estate of Kenneth Raymond Stewart in the amount of \$850,000.
- [52] I will allow the parties the opportunity to propose orders that will provide further and better provision for the applicant, Michael Robert Stewart, in accordance with these reasons. I will also allow the parties to agree an order in relation to costs, failing which I will provide them with an opportunity to make submissions in relation to the form of order and costs.

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<sup>13</sup> [2014] NSWSC 371 at [144] – [149].

<sup>14</sup> [2010] QSC 35 at [68].