[2021] JMSC Civ.95

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2016HCV02499

In the Matter of the Estate of Harold Eustace Melville Morrison, Deceased

AND

In the Matter of Sections 4 and 6 of the Inheritance (Provision for Family and Dependants) Act

BETWEEN	**MARJORIE MORRISON**	**1st CLAIMANT**
AND	**MARJORIE MORRISON**	**2nd CLAIMANT**
	(LEGAL GUARDIAN OF JAMES MORRISON)	
AND	**SJAUN MORRISON**	**3rd CLAIMANT**
	(MOTHER AND NEXT FRIEND OF ZOE MORRISON)	
AND	**SJAUN MORRISON**	**4th CLAIMANT**
	(MOTHER AND NEXT FRIEND OF ZARA MORRISON)	
AND	**LOURICE MORRISON**	**DEFENDANT**
	(Executor of the Estate of HAROLD EUSTACE MELVILLE MORRISON, Deceased)	

IN CHAMBERS

Mr. Maurice Manning Q.C., Ms. Sherry Ann McGregor and Ms. Camille Wignall instructed by Messrs. Nunes, Scholefield, Deleon & Co. for the Claimants

Ms. Amanda Montaque, Mr. Litrow Hickson and Mr. James-Earle Kirkland instructed by Myers, Fletcher & Gordon for the Defendant

Sections 4, 5, 6 and 7 of The Inheritance (Provision for Family and Dependants) Act – Whether grandchildren are applicants under the Act – the factors which the Court must consider in exercising its jurisdiction.

Heard: March 17, 18, 22 and May 28, 2021

Carr, J (Ag.)

Introduction

[1] The Claimants seek the following orders:

1. A Declaration that the 1st Claimant, the former wife of the deceased, Harold Eustace Melville Morrison, is entitled to receive reasonable financial provision from the deceased's estate.
2. A Declaration that James Morrison, the child of the deceased, Harold Eustace Melville Morrison, is entitled to receive financial provision from the deceased's estate.
3. A Declaration that Zoe and Zara Morrison, the children of James Morrison, and grandchildren of the deceased, are entitled to receive financial provision from the deceased's estate.
4. An Order that the Defendant make such lump sum payment or other provision form the deceased's net estate to the 1st Claimant in her capacity as the former wife of the deceased as this Honourable Court deems just.
5. An Order that the Defendant make such lump sum payment or other provision from the deceased's net estate to the 2nd Claimant in her capacity as the Legal Guardian of James Morrison as this Honourable Court deems just.

6. An Order that the Defendant make such lump sum payment or other provision from the deceased's net estate to the 3rd and 4th Claimant, Sjaun Morrison, in her capacity as the Mother and Next Friend of Zoe and Zara Morrison as this Honourable Court deems just.
7. Costs of this action be paid out of the estate of Harold Eustace Melville Morrison, deceased.
8. Such further and/or other relief as this Honourable Court deems just.

Background

[2] Harold Morrison (**the testator**) died on the 4th of March 2016. He was survived by his children and his spouse Lourice Morrison (**the Defendant**). The testator left a will in which he devised two personal assets to his son James Morrison and the remainder of his estate to the Defendant. The Defendant is also the sole executor of the will. His former wife Marjorie Morrison has brought this action against the testator's estate on behalf of herself and her son James. Sjaun Morrison is the mother of James's two children Zoe and Zara Morrison, and acts as next friend on their behalf. They are all seeking an order from the court under the Inheritance (Provision for Family and Dependants) Act (**The Act**). The essence of their claim is that the testator failed to make reasonable provision for them in his will and as a consequence of that failure, they are entitled to a share of his estate.

[3] Prior to his death the testator was a successful Architect and a partner in the firm Harold Morrison and Robert Woodstock and Associates Limited. In response to this claim the Defendant averred that the estate consisted only of the testator's 51% shares in the said firm. The shares were sold by her, subsequent to the filing of the suit, and she received the sum of Thirty Million Dollars. It is her contention that the Claimants are not entitled to any part of the estate.

Issues

[4] There are three main issues for determination.

a) Are the Claimants "applicants" under the Act?

b) Did the testator make reasonable provision for the Claimants in his will?

c) Whether the court should exercise its discretion under the Act?

The Law

[5] It is now settled law that there are certain circumstances where the court may interfere with a testator's right to dispose of property as he chooses. An application can be made by a named person, in accordance with the provisions of The Act, where it can be shown that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the maintenance of the applicant.[1]

> **"The application must be made after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out".[2]**

No issue was taken as to this point in this matter.

[6] An application under the Act can be made by the following persons:

> **(a) the wife or husband of the deceased;**
> **(b) a child;**
> **(c) a parent of the deceased who was being maintained wholly or partly or was legally entitled to be maintained wholly or partly by the deceased immediately before his death;**
> **(d) a former wife or former husband of the deceased, who was being maintained wholly or partly or who was entitled under an existing order of a court of competent jurisdiction or under an agreement between the parties**

[1] Intestates (Provision for Family and Dependants) Act Section 4 (1)
[2] Intestates (Provision for Family and Dependants) Act Section 5

to be maintained wholly or partly by the deceased immediately before his death.[3]

Submissions on Behalf of the Claimants and the Defendant

Claimants

[7] The claimants submit that there are two issues to be resolved. Firstly, are the claimants proper parties to this action, and secondly, what is the true value of the deceased's net estate. In answer to the first question it was submitted that Marjorie Morrison was the former wife of the testator. She had obtained a court order giving her the sum of One Hundred Thousand Dollars ($100,000.00) per month as maintenance for life. It was therefore the duty of the testator to make reasonable provision for her in his will, in light of the existing court order.

[8] James Morrison although an adult child, was a proper party to the claim as he was a child suffering from a mental disability. James was, subsequent to the death of the testator, declared a mental patient by the court.

[9] The submissions in respect of Zoe and Zara Morrison were somewhat different. It was acknowledged that they were not children as defined by the statute. The argument however was that they fell to be maintained by the deceased because of the incapacity of their father. Counsel relied on the Maintenance Act and opined that grandparents were obligated to take care of their grandchildren in circumstances where their parents could not do so.

[10] In submitting on the second issue Counsel suggested that the court ought not to be misled by the Defendant as to the paltry sum of Thirty Million which she put forward as the value of the estate. There was evidence to suggest that based on the nature of the testator's business, his real estate holdings and lavish lifestyle, his estate was worth far

[3] Inheritance (Provision for Family and Dependants) Act Section 4 (2)

more than the Defendant put forward to this court. They relied on the evidence of the court appointed expert who valued the testator's architectural firm. They also submitted that the Defendant by her actions was less than forthcoming with the court as to the assets which made up the estate. Due to her dual role as executor and sole beneficiary of the estate the Defendant was able to sell the shares in the firm in an effort to avoid this action.

[11] The shares, it was argued, were grossly undervalued and as such the estate made a loss. The actions of the Defendant were deliberate as this was done subsequent to the filing of the claim and was in an effort to thwart the claim. It was submitted that the court in reliance on the evidence of the expert should make a finding that the estate provides Marjorie Morrison with the sum of Fifteen Million ($15,000,000), James Morrison with the sum of Thirty Million ($30,000,000) and Zoe and Zara Morrison with the sum of Five Million ($5,000,000). In the event that the court is of the view that the estate's true value is Thirty Million Dollars ($30,000,000) then they request on behalf of Marjorie Morrison Ten Million Dollars ($10,000,000), for James Morrison Fifteen Million Dollars ($15,000,000) and on behalf of Zoe and Zara Morrison the sum of Two Million Five Hundred Thousand Dollars ($2,500,000).

Defendant

[12] Counsel for the Defendant at the commencement of the matter raised a preliminary point. It was submitted that the grandchildren are not applicants under the Act. It was later further submitted in closing, that the matter was commenced without a certificate of next friend so that, in any event, the grandchildren were not properly a party to the claim.

[13] In relation to Marjorie Morrison they submitted that she was not entitled to anything at all. The former Mrs. Morrison had received a significant cash settlement on divorce and was not in need of any assistance. Her evidence was that she resides with one of her daughters and pays no bills, it was argued that she is able to maintain herself for the remainder of her days.

[14] It was also submitted that James Morrison failed to qualify as a child with special needs. James it was contended, did not suffer from a mental disorder but instead had a

drug habit which was unlikely to be resolved if he was financially supported in this habit by his parents or other relatives. The purpose of The Act was to provide maintenance for qualified persons who are incapable of maintaining themselves. James is married and is the father of two children. At some point he held a job and was able to provide for his family. What he needed according to medical doctors was an opportunity to take care of himself in the real world. He was never maintained by the testator and he did not share a good relationship with him. He therefore ought not to benefit from the estate of the testator.

[15] Finally it was argued that the net estate was valued at Thirty Million Dollars and this sum of money was insufficient to cover the expenses of the Defendant. If the court made such an order as set out by the Claimants it would result in undue hardship to the Defendant.

Analysis and Discussion

Are the Claimants "applicants" under the Act?

Marjorie Morrison

[16] There is no doubt that the former Mrs. Morrison is an appropriate party to this claim. The evidence before the court is that she was the former spouse of the testator and she was entitled under an existing order of a court of competent jurisdiction to be maintained by him before his death. I have no difficulty in finding that she is a suitable person under The Act to make this claim.

James Morrison

[17] The position of James Morrison is somewhat different. Counsel submitted that he is a child under The Act because he suffers from a mental impairment. The fact that he is the subject of a court order declaring him as a mental patient under the Mental Health Act supports this position. Until that order is challenged or revoked he is a person in need of assistance due to his mental disability. Counsel for the Defendant argued that James is not suffering from any mental disability but a drug addiction.

[18] Section 2 of The Act defines **"a child as someone who is under the age of eighteen (18) years and includes a child of or over the age of eighteen (18) years if there are special circumstances (including physical and mental disability) which justify the disregard of the age limit".**

[19] There is no definition of mental disability in The Act. However, the declaration by a court of competent jurisdiction as to James' inability to make decisions for himself must have been based on evidence. To support their position Counsel for the Claimants relied on a medical report dated March 29, 2016 provided by Dr. Wendel Abel which was exhibited to the Affidavit of Marjorie Morrison. In that report Dr. Abel gave the following opinion and recommendation:

> **"In summary, Mr. James Morrison is a 47 year old male who is currently residing in a drug rehabilitation facility. His history and the clinical findings are consistent with the diagnosis of a Bipolar Spectrum Disorder. Over the course of his illness Mr. Morrison has not been able to maintain stable employment and he has not been able to fulfill his obligation as a husband and father to his two daughters. His career has been punctuated by frequent relapses in his illness and recently he has not been able to exist independently in the community".**

[20] It is not unreasonable to conclude based on the evidence, that James's inability to exist independently in the community is as a result of his diagnosis of a bipolar disorder in addition to his drug use. To determine which came first would be counterproductive since his diagnosis remains unchallenged. What is clear is that he has had several instances of a relapse that have led to him being a permanent resident at a facility. Marjorie Morrison as his legal guardian is entitled to make the best decisions that she sees fit in his interest. I find and accept that he is a child suffering from a mental disability which justifies the disregard of the age limit as outlined in The Act, he is therefore a suitable party to this claim.

Zoe and Zara Morrison (by next friend Sjaun Morrison)

[21] It has been the position of the Defendant that the grandchildren are not a proper party to the claim. I have to agree. The Act is specific as to who should apply. There is no provision for grandchildren. The UK legislation makes provision for persons who were being maintained by the testator up to his death there is no similar provision in The Act. Our legislators must have intended to keep the category closed so that it would limit the number of applicants who perceived that they were aggrieved by a testator. By way of comment, I also considered Counsel's submission that the court should also look to the Maintenance Act. It is my considered view that it could not be used to rest a burden on grandparents to take care of a child when there is at least one parent who can do so. In this case Sjaun Morrison is alive, hale and hearty. She is currently employed and from all indications by her appearance is not wanting. Where there is a parent who is able to maintain their child a grandparent cannot be called upon to do so.

Did the testator make reasonable provisions for the Claimants in his Will?

[22] The testator's Last Will and Testament was referred to in the Affidavit of the Defendant and attached to a certificate of exhibit dated the 21st of April 2017. The relevant sections are set out below:

> "4. I give devise and bequeath all of my estate both real and personal of whatsoever kind and wheresoever situate to my wife Lourice Adib Morrison of 10 Durie Drive. Kingston 8, in the Parish of Saint Andrew, absolutely, including those specified here.
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> i) Residence at Durie Drive, Kingston 8, in the Parish of Saint Andrew, Jamaica.
>
> ii) Villa at San San Lot 33, Cold Harbour Estate, in the Parish of Portland, Jamaica.
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> iii) Half proceeds of the sale of Townhouse #3 Carinosa, Ocho Rios, in the Parish of St. Ann.

iv) Beneficial ownership in Clarity Invest Limited, a Company duly incorporated under the laws of the British Virgin Islands, and administered by Coverdale Trust Services of Road Town, Tortola, British Virgin Islands, with the exception of Argentina Sovereign Bonds.

v) Shares in Harold Morrison Associates (Caribbean) Ltd., Pinfold Street, Bridgetown, Barbados.

vi) Shares in Harold Morrison Associates Interiors Ltd., 15 Bedford Park Avenue, Kingston 10, Jamaica.

vii) Art, Paintings, Sculptures, and all other contents of 10 Durie Drive, Kingston 8, Saint Andrew.

viii) A BMW motor car.

ix) All residual monies to the credit of October Investment Management Ltd. accounts, both at Bank of Nova Scotia Jamaica Limited and at UBS Paine Webber.

5. I Give Devise and Bequeath to my son James Melville Morrison, as follows:

i) Beneficial ownership of all my Argentine Sovereign Bonds, held by Clarity Invest Limited, a Company duly incorporated under the laws of the British Virgin Islands, and administered by Coverdale Trust Services of Road Town, Tortola, British Virgin Islands.

ii) Shares in the Jamaica Lottery Company Limited.

[23] Section 7 (1) of the Act indicates:

"Where an application is made for an order under section 6, the court shall, in determining whether the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is such as to make reasonable financial provision for the maintenance of the applicant and, if the court considers that such reasonable financial

provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters -

(a) the size and nature of the net estate of the deceased;
(b) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
(c) the financial resources and financial needs which any other applicant for an order under section 6 has or is likely to have in the foreseeable future;
(d) any obligations and responsibilities which the deceased had towards any applicant for an order under section 6 or towards any beneficiary of the estate of the deceased;
(e) any physical or mental disability of any applicant for an order under section 6 or any beneficiary of the estate of the deceased;
(f) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
(g) the deceased's reasons, so far as they are ascertainable, for making provision or for not making provision or for not making adequate provision, as the case may be, for any person by his will:
(h) the conduct of the applicant towards the deceased;
(i) the relationship of the applicant to the deceased and the nature of any provision for the applicant which was made by the deceased during his lifetime;
(j) any other matter which, in the circumstances of the case, the court may consider relevant.

[24] In the English case of **Re Coventry (Deceased); Coventry v. Coventry (1979) FLR Rep. 142, at 474 – 475** Oliver, J considered the basis upon which a court should determine the question of reasonable provision.

"It is not the purpose of the Act to provide legacies or rewards for meritorious conduct. Subject to the court's powers under the Act and to

> **fiscal demands, an Englishman still remains at liberty at his death to dispose of his own property in whatever way he pleases…In order to enable the court to interfere with and reform those dispositions it must, in my judgment, be shown, not that the deceased acted unreasonably, but that, looked at objectively, his disposition or lack of disposition produces an unreasonable result in that it does not make any or any greater provision for the applicant…"**

[25] A review of the case law in respect of The Act has affirmed the following principles: **"the main purpose of an order under the Inheritance Act is to provide maintenance, not a bequest."**[4] The first stage in the process is to determine whether the testator made reasonable provision for the applicants, if at all. The second step if the answer to the first question is in the negative, is to assess whether the court should exercise its powers under The Act and to what extent it should do so. In determining **both** (my emphasis) steps, the court should have regard to the circumstances outlined in section 7 (1) of The Act.

Marjorie Morrison

[26] In applying the foregoing principles to the present facts, there is without question no provision made for Marjorie Morrison in the will of the testator. The first question for determination therefore is whether the failure of the testator to make any provision for her has produced an unreasonable result.

[27] In analysing the evidence presented to this court which was contained in several Affidavits as well as the cross examination of the former Mrs. Morrison I considered her demeanour as well as the tenor of her evidence. I found her to be a truthful witness however she was wary of admitting to the strained nature of her relationship with the testator. In fact it was observed on several occasions that she tried to downplay the many

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[4] Judith Parchment vs. Marrion Genus unrep. Claim No. HCV00920 of 2005 Delivered 19th of September 2006 at pg. 19

court actions the two were involved in prior to his death. She wanted to give the impression that their relationship had survived the trauma of the many and varied court battles. It was her evidence that there was no residual animosity between the parties. It is hard to accept that position given the bequests of the Last Will and Testament of the testator in addition to her continued pursuit of his estate, which I found was not so much about her own needs but in relation to her view that the testator was wealthy and as such ought to have left his children something in his will. It was her evidence that she did not believe the will was in fact that of her late ex-husband.

[28] Prior to the death of the testator Marjorie had obtained an order for maintenance which provided her with the sum of One Hundred Thousand Dollars per month until death or remarriage. Marjorie never remarried, and following the order, the evidence is that the testator upon her request increased the amount of maintenance to One Hundred and Fifty Thousand Dollars per month. It could be argued that the testator's failure to make provision for his former wife in his will runs contrary to the order of the court and his own conduct towards her prior to death. It could in fact be said that his actions were unreasonable. However, it is not the duty of the court to impose its own views as to how the testator should have disposed of his assets under his will. The court must instead look at all the circumstances as set out in Section 7 (1) to see whether the result of his failure to make a disposition has produced an unreasonable result.

[29] In their submissions the Claimants cited two authorities from this jurisdiction. In the cases of **Louise Williams v. Stephen Mavou and Anor**[5] and **Judith Parchment v. Marion Genus**[6], the courts dealt with issues concerning a husband who failed to make provision in his will for his wife. In **Mavou** the applicant was married to the deceased for twenty four years. According to the applicant they purchased property together but her name was never placed on the title. The property was the only asset listed in the estate of the deceased. In that case it is not difficult to see why the court made an order under

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[5] (2000) 61 W.I.R 302
[6] Supra. 4

The Act as the applicant would have held a beneficial interest in the property which formed the basis of the estate. In **Parchment** the facts were somewhat similar, the applicant was previously married to the deceased. The property which formed a part of the estate was owned solely by the deceased, however the applicant made contributions to the cost of the construction and outfitting. The applicant had also obtained a maintenance order in respect of her son which she was in the process of enforcing at the time of the death of the testator. In those circumstances an order under The Act would be reasonable given the beneficial interest the applicant held in the property in addition to the maintenance order made in respect of her son.

[30] The aforementioned cases can clearly be distinguished from the present situation before this court. In this case there were divorce proceedings between the testator and Marjorie Morrison prior to his death. In considering her financial needs and resources I take into account the fact that the former Mrs. Morrison, after a lengthy and painful divorce battle with the testator obtained a financial settlement. In cross examination she was asked about that settlement. She agreed that she received a 50% interest in property located at Millsborough Pines where she presently resides with her daughter and family. The Millsborough property is now fully owned by her as the proceeds she received from her half of the Durie Drive property was applied to its purchase. She also admitted to having a 50% interest in the property at Enchanted Gardens Ocho Rios.

[31] Subsequent to another court action Marjorie was also the recipient of a cash settlement from the sale of Jamaica Lottery shares. Although she told the court that all of that money went to pay the lawyers who represented her in the divorce proceedings, it is clear from the evidence that she received a significant financial settlement upon divorce. She agreed under cross-examination that there was a reverse mortgage on the house which was at her instance and that she received the sum of $100,000 per month in payment from the bank. This arrangement will end in May or June of this year.

[32] It was also her evidence that she is cared for by her daughter who resides with her at Millsborough. She does not contribute to the bills of the home as her daughter covers all her expenses. Given the resources that she has at her disposal as well as the aid of

her children, who are obligated to assist her under the Maintenance Act, I cannot find that she has established a case that she is in need of maintenance out of the estate of the testator. Marjorie has produced no documentation as to her present expenses or as to her present earnings whether from investments or otherwise. In fact her evidence is that the money she received for maintenance prior to the death of the testator was used to cover the expenses of her son James Morrison.

[33] In reliance on her own evidence there is nothing to indicate to this court that Marjorie is in need of financial assistance for her maintenance. Neither is there any evidence to suggest, as in the cited cases, that the testator has dispossessed her of any property which she was entitled to. Further, she has presented no evidence to establish that she is in poor health and therefore in need of extended medical care. There is no basis upon which a finding can be made that she has significant financial needs now or in the foreseeable future.

[34] There are two other factors listed under section 7 (1) that are worthy of consideration in discussing this issue. The testator's reasons for not making any provision for the former Mrs. Morrison and her conduct towards him during his lifetime. It is accepted based on the evidence that they had a difficult marital relationship. Marjorie outlined in her affidavit graphic details as to the challenges that she had in her marriage. The divorce proceedings were rife with bitterness and was a lengthy almost never ending battle. Her legal claims against the testator have followed him even in death as she also filed a claim against his estate for maintenance.

[35] The intention of the testator can be inferred from his will as well as his decision to transfer his properties to the Defendant prior to his death. There was no intention on his part, for anyone apart from James to benefit from his estate. Marjorie Morrison throughout the many court proceedings continued to pursue her agenda even at considerable financial cost to herself. It was her evidence that most of the money she received from her divorce settlement was used to defray legal expenses. What could be her motive for pursuing these matters? The Defendant argued that she was motivated by spite and that her intention is to deplete the estate. Whatever her true motives are the relationship

between herself and the testator cannot be classified as a good one. There are costs outstanding in respect of her last application before the court which would be money owed to the said estate that she is presently suing.

[36] In summary, although no provision was made for Marjorie Morrison in the will of the testator, I find and accept that this was reasonable given the financial circumstances of Marjorie Morrison, the nature of the relationship between herself and the testator and her conduct towards him during his lifetime. I find and accept that the testator's failure to make provision for her in his will does not produce an unreasonable result.

James Morrison

[37] With respect to James Morrison, the testator did make provision for him in his will. At the time of this hearing, the evidence is that the shares bequeathed to him are no longer in existence. The court's declaration as to James' mental capacity was made subsequent to the death of the testator. He is presently a resident of a facility. He has according to Marjorie Morrison been "clean" now for several years, however his diagnosis of a bipolar disorder continues to make him vulnerable.

[38] The unchallenged evidence is that he has been unable to reintegrate into society. He has not had a steady job in many years and is now close to the age of retirement. He has no financial resources and is clearly in need of maintenance. Despite his rocky relationship with his father, it is clear that the intention of the testator was to leave his son something of value. In the circumstances based on the present situation that James has found himself in, I find and accept that the disposition in the will of the testator has produced an unreasonable result. James is now bereft of the necessary resources to maintain himself.

Whether the court should exercise its discretion under the Act?

The size and nature of the net estate of the deceased

[39] The majority of the evidence led in this case focused on the "Net estate" of the testator. Its significance cannot be undervalued, however it is to be noted that Section 7

(1) does not rank the considerations by priority. Although the size and nature of the net estate is the first factor for consideration, The Act does not give weight to one factor over another. It does not specify either that there must first be a determination as to the exact value of the estate before a court can make a decision on any application. It is merely another factor for consideration in the courts' exercise of its discretion.

[40] It is my considered opinion that the importance of this factor rests primarily on the need to establish that there are sufficient assets within the estate that can actually be shared without compromising either the gift to the named beneficiary or the applicants need for maintenance.

[41] It is within this context that I examine the evidence produced by both the Claimant and the Defendant in this regard. **"The net estate, in relation to a deceased person, is defined as - (a) property which the deceased had power to dispose of by his will (otherwise than by virtue of a special power of appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities, including any transfer or other tax payable out of his estate on his death; (b) other property including any sum of money which is treated for the purposes of this Act as part of the net estate of the deceased; (c) other property including anv sum of money which is, by reason of a disposition made by the deceased".**[7]

[42] The Defendant by way of Affidavits filed on the 4th of November 2016 and the 21st of April 2017 indicated that the estate at the time of the testator's death consisted solely of the shares in the architectural firm Harold Morrison Associates Interiors Limited. She averred that the motor vehicles were owned by the firm and that the pieces of art were given to her as gifts prior to the death of the testator. In an Affidavit filed on the 25th of May 2017 she disclosed that the estate had liabilities including, a costs order arising out of an action against the testator, funeral expenses, uninsured debts, testamentary

[7] Section 2 Inheritance (Provision for Dependants) Act

expenses, including legal fees and taxes on obtaining the grant of probate, transfer taxes payable upon the transfer of the shares in the company and the costs of this litigation.

[43] She also averred that the property in Ocho Rios was previously jointly owned by the testator and Marjorie Morrison. Following a court order the tenancy was severed and the property was to be sold with each party receiving a fifty per cent share. The property was therefore both an asset and a liability as taxes continue to be incurred pending a sale. The shares in the Jamaica Lottery Company were the subject of another court action by Marjorie Morrison and the court declared that the shares belonged to the testator. Marjorie received a cash settlement out of the proceeds of the sale of the shares. The Argentine Bonds were no longer in existence as the Argentine government during the great depression reneged on the payment of its international sovereign bonds. The testator she says, lost all of this investment.

[44] It was also the uncontroverted evidence that the testator transferred the properties located at Durie Drive and San San Portland into their joint names prior to his death. The only asset therefore that makes up the testator's estate for the purpose of this application are the shares in Harold Morrison and Associates (Caribbean Ltd.) and Harold Morrison Associates Interiors Ltd.

[45] This is the major point of contention between the parties. The Defendant at the commencement of this claim maintained that the shares were the only assets belonging to the estate. The Claimants argued that replete with this knowledge the Defendant went ahead and deliberately sold the shares at an overly deflated cost in an effort to thwart this application. The true net estate therefore ought not to be accepted as the value of the shares as sold.

[46] The Claimants in their quest for what they claimed to be the true value of the estate sought orders by way of disclosure against the defendant at first, and then later the principals of the firm. They were stonewalled by the Defendant who by affidavit indicated that she could not assist and then they were blocked by the firm. By way of a court order by Palmer – Hamilton J (Ag.) as she then was, they obtained disclosure from the

company. The Claimants were successful on the subsequent appeal, and pursuant to another court order, Mr. Ashburn Simon the chief auditor of the company gave evidence in court as to the financial accounts, as well as the circumstances which led up to the value that he proffered to the managing partner of the firm. It is Mr. Simon's estimate of value dated May 17, 2017 that was relied on by the Defendant when she sold the shares.

[47] Also by way of court order, Mr. Wayne Strachan was accepted as an expert to provide an independent assessment as to the value of the company on behalf of the Claimants. Mr. Strachan's report was Exhibit 2. He gave his opinion of value as ranging between Two Hundred and Thirty Two Million Two Hundred and Sixty One Thousand Eight Hundred and Seventy Seven Dollars ($232,261,877.00) and Four Hundred and Twenty Eight Million Twenty Nine Thousand Six Hundred and Nineteen Dollars ($428,029,619.00). The latter figure he indicated was based on the net assets method of valuation which he opined was the preferred approach.

[48] The testator's daughter Lisa Seivright was also called as a witness on behalf of the Claimants to support the position that the company's shares were undervalued. She had been employed to the firm for some twenty years and resigned in January of 2017. She gave evidence as to the extensive portfolio of the firm and at paragraph 8 of her affidavit filed on the 9th of June 2020, she stated:

> *"Based on my knowledge of the income the Firm earned up to 2017, and the income it was poised to continue to earn, based on the projects that it was handling, I am firmly of the view that the valuation prepared by Ashburn Simon, the Firm's Chartered Accountant, estimating the value of 51% of the shares in the Firm at between $27 Million and $30 Million was grossly understated".*

[49] It was her evidence that the firm had many lucrative projects for which they would earn 10 % of the construction costs. She was aware of two outstanding invoices for $259,200,000 that had been unpaid up to the time of her father's death.

[50] Counsel for the Defendant argued that there was no need for the court to go down the road of trying to determine the value of the company as the shares had already been sold. The Defendant was the sole beneficiary under the will and therefore had the authority to deal with the shares as she saw fit. Further, the sale of the shares was not some sinister plot to deprive the Claimants, it was prompted by the Articles of Incorporation of the Company which indicated that upon the death of a partner those shares must be sold to the remaining partner. The Defendant therefore had no choice but to proceed with the sale. Having received an estimate for the value of the shares, which amounted to Thirty Million Dollars she proceeded to execute the transfer. The net estate was therefore Thirty Million Dollars.

[51] It is difficult to accept the Claimant's argument that the court should impose a value on the shares based on the assessment that was done by their expert Mr. Strachan. Throughout cross examination he was challenged as to several aspects of his report and his answers were less than helpful in determining the true value of the firm.

[52] There were glaring areas of concern in his report. In cross examination he agreed that his valuation was conducted based on financial reports for the year ending December 31, 2015. This was prior to the death of the testator and also prior to the sale of the shares by the Defendant. He was unable to confirm whether the testator was one, out of two key fee earners in the architectural firm, as he did not have that level of detail as to the firm and its staffing. He was asked if he agreed that the source of income for the firm was through the payment for architectural services provided by the architects. He answered that the company would generate the invoice for services rendered.

[53] Mr. Strachan was asked whether the death of one of the partners in the company would likely lead to a decrease in the earnings and he told the court that this was a logical assumption. Despite saying so he made no adjustments to his valuation based on the death of the testator in 2016. It was his evidence that his valuation was specific to the end of the period December 2015, he therefore could not speak to its value thereafter. He also agreed that the net asset of the firm could fluctuate from year to year, so that if the shares were valued in 2014 it would be significantly lower than in 2015. He affirmed

that due to the fact that the sale of shares are subject to negotiations, they are almost always sold at a price which is different from that of the book value of the shares. He also agreed that his valuation did not take into account whether the assets of the firm were free and clear of liens or mortgages.

[54] In re- examination an effort was made to clarify some of these admissions. He told the court that he was not convinced that the testator and Robert Woodstock were the main fee earners in the firm. He said that in 2020 there was no evidence of any liens or mortgages on the firm's assets. He did take into account the future earnings of the company however it was not included in his report because he did not get the cooperation of the company in providing the necessary data to support his conclusions.

[55] I did not accept Mr. Strachan's evidence as useful. The fact that his value was determined in 2015 prior to the death of the testator, who by all indications was a major fee earner in the firm, as well as the fact that the valuation was done prior to the actual date of the sale of the shares raises questions as to the relevance of his testimony. Although it brings to light evidence as to the wealth of the firm it does not correlate to the time when the shares were in fact sold.

[56] Ms. Seivright's cross examination was brief. She admitted that she did not know the value of the company and that since January 2017 she was no longer involved in the firm's management. It was also accepted by her that she was not an auditor or an accountant. I did not find that her evidence assisted the court on this issue.

[57] I cannot find that there is any evidence before this court to show that the net value of the estate is anything other than what the Defendant has declared it to be. The fact is that the firm's accountant Ashburn Simon, provided a letter to the remaining partner giving an estimate of the value of shares. His evidence on cross-examination was that *"valuing a company is very subjective there is no one accurate value. When we prepare a value that is the starting point of negotiations."* The Defendant participated in negotiations and sold her shares for Thirty Million Dollars, that is her evidence.

[58] I do take into account however the length to which the firm tried to avoid an investigation into its true value and the actions of the Defendant in selling the shares quickly. I am therefore not inclined to accept that all the assets have been properly presented to the court. The Defendant also spoke of bank accounts to which she never gave a value, those accounts would also form a part of the net estate of the testator. Although an exact figure cannot be determined, it is evident that at the basic figure of Thirty Million, the estate is possessed of sufficient resources to cover the testamentary expenses as well as to provide a sum of money in maintenance on behalf of James Morrison.

The financial resources and financial needs which the applicant has or is likely to have in the foreseeable future

[59] James has been a resident of a facility for several years. He is now fifty-three years old. Given his age it is questionable as to whether he will be able to obtain lucrative employment even if he is found fit to be released. James may need assistance for quite some time in the future. His mother has been paying the cost of his housing and all other related expenses. I find and accept that he is not in a position at this time or in the near future to maintain himself.

The financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future.

[60] I observed the demeanour of the Defendant as she gave her evidence. I did not find her to be very forthcoming as to her present financial position. It was her evidence that she will be unable to afford to maintain herself if the Claimant's application is granted. She is now over seventy years of age and unemployed. The net estate it was submitted would barely be able to maintain her for the remainder of her life.

[61] The home at Durie Drive it was argued is a large one and needs to be maintained. As a widow this falls squarely on her shoulders. It was elicited under cross-examination that the property at San San was listed on AirBandB, however the Defendant told the court that she had not received any interest in it and so had removed it from the site. The

property located in Ocho Rios is more of a liability than an asset. She could not recall how much money was left in the bank accounts of the testator. The Defendant wanted the court to find that despite all her assets she would have a difficult time of maintaining her standard of living on the sum she received from the sale of the shares.

[62] The fact that the Defendant stands possessed of three residential properties cannot be ignored. I do not accept that the defendant will suffer severe hardship if an order is made pursuant to The Act. The money received from the sale of the shares is to be considered in addition to the assets which she presently holds. I find that her disposition will not be compromised by an order of the court in favour of James Morrison.

> ***The deceased's reasons, so far as they are ascertainable, for making provision or for not making provision or for not making adequate provision, as the case may be, for any person by his will, the conduct of the applicant towards the deceased; the relationship of the applicant to the deceased and the nature of any provision for the applicant which was made by the deceased during his lifetime.***

[63] The fact that the testator made provision in his will for James Morison shows that he had an interest in making sure that his adult son was taken care of. The court should give true effect to his wishes.

Conclusion

[64] I am not persuaded that periodic payments will assist James Morrison. The Act permits a variety of orders to give effect to the mandate of providing maintenance for applicants. Given the mental capacity and the uncertainty of James' future prospects and care, it is my considered view that a trust fund is the most suitable order that can be made. James is now a resident of Teen Challenge in St. Ann. His monthly expenses were set out in the Affidavit of Marjorie Morrison sworn to on the 15th of June 2016. The total sum was Three Hundred and Twenty Five Thousand Dollars monthly. That figure computes to Three Million Nine Hundred Thousand per year.

[65] James has been drug free for some time and needs to be given an opportunity to continue his life outside of a residential facility. The sum of Ten Million Dollars is a reasonable amount to help to meet his present expenses and to afford him funds to restart his life. This provision for approximately three years will not result in the depletion of the estate, and will allow for the Defendant to maintain her current lifestyle. The funds, when invested, will ensure that James Morrison has a chance to recover from his illness and once again with the assistance of his family, return to society.

Costs

[66] The Defendant's attorney submitted that they were entitled to a wasted costs order against the Claimants for the action which was commenced on behalf of Zoe and Zara Morrison. Rule 64.13 (1) and 64.14 (1) of the Civil Procedure rules provides:

> **"In any proceedings the court may by order - (a) disallow as against the attorney-at-law's client; and/or**
>
> **(b) direct the attorney-at-law to pay, the whole or part of any wasted costs.**
>
> **(2) "Wasted costs" means any costs incurred by a party - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any attorney-at-law or any employee of such attorney-at-law; or**
>
> **(b) which, in the light of any act or omission occurring after they were incurred, the court considers it unreasonable to expect that party to pay.**
>
> **64.14 (1) This rule applies where - (a) an application is made for; or (b) the court is considering whether to make without an application, an order under rule 64.13(1).**
>
> **(2) Any application by a party must - (a) be on notice to the attorney-at-law against whom the wasted costs order is sought; and**
>
> **(b) be supported by evidence on affidavit setting out the grounds on which the application is made.**

(3) If the court is considering making such an order without an application it must give the attorney-at-law notice of the fact that it is minded to make such an order.

(4) A notice under paragraph (3) must state the grounds on which the court is minded to make the order.

(5) A notice under paragraph (2) or (3) must state a date, time and place at which the attorney-at-law may attend to show cause why a wasted costs order should not be made.

(6) 7 days notice of the hearing must be given to the attorney-at-law against whom the wasted costs order is sought and all parties to the proceedings.

[67] The Attorneys for the Defendant have not made a formal application under Rule 64.14 (1). There is no evidence on Affidavit supporting the contention that the Attorneys on behalf of the Claimants acted improperly, unreasonably or negligently in commencing the claim on behalf of the grandchildren. They presented their arguments as in any other claim and those arguments were rejected. I am not minded to make any such order given the circumstances of this case.

[68] The Claimants have prevailed partially in respect of this action and the Defendant has also been successful with regard to another aspect of the claim. Counsel for the Claimants have insisted that the Defendant should bear the costs of this action in her personal capacity. There is no reason that I can find that this should be so. Her position that the estate was valued at Thirty Million was roundly rejected by the Claimants, their quest to ascertain evidence to contradict this was in support of their case. Ultimately he who avers must prove. The Defendant ought not to be punished for that.

Disposition

[69] Marjorie Morrison has not satisfied the court that Harold Morrison's failure to make provision for her in his will produced an unreasonable result based on the factors to be

considered under section 7 (1) of The Act. She is therefore not entitled to any provision from his estate.

[70] Sjuan Morrison as next friend for Zoe and Zara Morrison is not a proper party to this claim.

[71] James Morrison is entitled to reasonable provision from the estate of Harold Morrison.

[72] The sum of Ten Million Dollars is to be provided for James Morrison out of the estate of Harold Morrison.

[73] A trust fund is to be set up on behalf of James Morrison. Marjorie Morrison is to be appointed as trustee and she is permitted to appoint other trustees as she deems fit. The money is to be invested in an interest bearing account until James Morrison is no longer the subject of a court order.

Order:

1. The sum of Ten Million Dollars is to be provided to James Morrison out of the estate of Harold Eustace Melville Morrison.

2. The sum of Ten Million Dollars is to be placed in a trust fund on behalf of James Morrison and is to be invested in an interest bearing account until James Morrison is no longer the subject of a court order.

3. Marjorie Morrison is appointed as trustee and she is permitted to name any other person as trustee as she deems fit.

4. Each party is to bear their own costs.