

# Family fights being left out of a will

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LEGAL MATTERS



Their adult children argued that the deceased had failed in his moral obligations towards them, and that it was likely their mother would also fail to make provision for them.

This succeeded, despite the fact that a letter of intent, provided with the will, clarified that the couple shared a sincere belief that all persons should provide for their own welfare. The couple themselves had not accepted inheritances from their parents, as a result of that belief.

A troubled family history was relayed to the court. While the children were young, the father worked long hours and the mother's mental illness had resulted in the children being placed in foster care. The court accepted evidence that the mother's parenting "left a lot to be desired".

She had inappropriately used

physical discipline on her children, and continued to be emotionally manipulative and controlling, playing the children off against one another.

Throughout the children's adulthood, the parents had refused to offer help and support through various difficult times – steadfast in the belief that parents should not provide support into adulthood. The children's view was that their difficult childhood had contributed to numerous problems in their adult lives.

While the mother was personally wealthy, many of the children were impoverished and suffering from health issues.

While the court acknowledged that a surviving spouse's claim against an estate is generally paramount, it clarified that was not an absolute rule.

It found that the man's

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indifference to his children was neglectful, and at the time of death his offspring were deserving of his recognition and emotional support. On balance, based on the exceptional family history, the court found the deceased breached his moral obligations towards his children by not providing for them in his will.

Despite the mother still being alive, the estate was divided, with 55 per cent going to the mother and the rest distributed amongst the children.

Although the facts of this case are unusual, it does highlight the need for each of us to have not only an up-to-date will, but one that is well considered and based on good quality advice.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484, [www.raineycollins.co.nz](http://www.raineycollins.co.nz). If you have a legal inquiry you would like discussed in this column please email Alan on [aknowsley@raineycollins.co.nz](mailto:aknowsley@raineycollins.co.nz)

**W**e are receiving an increasing number of enquiries about challenging wills.

Part of the reason for this is that nowadays, there are many blended families and many parents who have entered into second or third relationships with "significant others". These relationships can create difficulties when someone dies, particularly if a person dies with a will that is not up-to-date, or with no will at all.

When you make a will, you want to know that your property will go to the people you want it to. You can leave close family members out of your will, or recognise family members in unequal shares if there are good reasons for it, but the will may be challenged if those left out or inadequately provided for believe they should have received more.

However, it is not only in these types of blended family situations that a will can be challenged. In one case, a deceased father left his estate entirely to his surviving wife, the mother of his children.



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