

NOTE: ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOV.T.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2011-404-3775
[2014] NZHC 869**

IN THE MATTER OF the Declaratory Judgments Act 1908,
 declarations at common law and orders
 under the inherent jurisdiction of the High
 Court that are analagous to orders under
 the Protection of Personal and Property
 Rights Act 1988.

BETWEEN YVONNE CARRINGTON
 Applicant

AND BRIAN CARRINGTON
 Respondent

Hearing: 31 March 2014, 1 April 2014

Counsel; J G Miles QC and S Grant for Applicant
 H Waalkens QC, F Monteiro and R M Gale for Respondent
 K Davenport QC for Interested Party A
 R B Stewart QC and B Tompkins for Interested Parties B and C
 M Sandelin for Respondent's Property Manager

Judgment: 30 April 2014

JUDGMENT OF KATZ J

This judgment was delivered by me on 30 April 2014 at 4:30 pm, pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Solicitors: Harmos Horton Lusk, Auckland
 Wilson Harle, Auckland
 Gilbert Walker, Auckland
 Minter Ellison Rudd Watts, Auckland
Counsel: J G Miles QC, Auckland
 H Waalkens QC, Auckland
 R B Stewart QC, Auckland
 K Davenport QC, Auckland
 S A Grant, Auckland

Table of Contents

Introduction	1
Background and overview of issues	3
The High Court's parens patriae jurisdiction	10
Historical origins and current status of the jurisdiction - England	10
The parens patriae jurisdiction in New Zealand	15
The scope of the jurisdiction	18
The Declaratory Judgments Act 1908	20
The Family Court's jurisdiction under the PPPRA	22
Overview of the PPPRA	22
Provisions relating to wills	25
Enduring powers of attorney	28
The interface between the jurisdiction of the High Court and Family Court	30
The key issue	30
The relationship between the Declaratory Judgments Act and the PPPRA	31
Can the Declaratory Judgments Act jurisdiction be invoked where there are significant factual disputes?	39
The relationship between the parens patriae jurisdiction and the PPPRA jurisdiction	45
Orders and declarations sought in relation to enduring powers of attorney	62
Orders and declarations sought regarding Mr Carrington's will	72
Does the Declaratory Judgments Act provide jurisdiction to determine the validity of the will of a living will-maker?	76
Can the High Court determine the validity of the will of a living will-maker in its parens patriae jurisdiction?	90
Order sought in relation to evidence in potential future proceedings regarding Mr Carrington's will	93
Declarations sought in relation to whether Mr Carrington had capacity in 2011 to bring proceedings in the Family Court	96
Confidentiality and suppression orders	101
Summary and conclusion	102
Result	107

Introduction

[1] Mrs Carrington claims in these proceedings that her estranged husband, Mr Carrington,¹ was unduly influenced to change his will and enduring powers of attorney in May 2011, at a time when he lacked mental capacity to do so. She seeks orders and declarations that Mr Carrington's new will and powers of attorney are invalid, together with a declaration that he lacked mental capacity to file proceedings in the Family Court in 2011 seeking dissolution of marriage and a division of relationship property.

¹ I have used pseudonyms to protect the identities of the parties.

[2] Mr Carrington has applied to strike out Mrs Carrington's proceedings.² He says that this Court has no jurisdiction to make the various orders and declarations sought and, further, that the proceedings are an abuse of process. In particular, counsel for Mr Carrington submitted that bringing proceedings in this Court was a "cynical attempt" to circumvent the jurisdiction of the Family Court under the Protection of Property and Personal Rights Act 1988 ("PPRA"). To the extent that these proceedings raise issues that are justiciable at all, Mr Carrington says that the proper forum for them is the Family Court.

Background and overview of issues

[3] Mr and Mrs Carrington married in 1988 and have been separated since 2006. In addition to the two children of their marriage, they both have adult children from prior marriages. Mr Carrington appointed Mrs Carrington as his power of attorney in relation to property in 1992 and also executed a will in her favour in 2004. Their subsequent separation in 2006 appears to have been largely amicable. Indeed, in 2009, Mr Carrington appointed Mrs Carrington his enduring power of attorney in relation to personal care and welfare.

[4] In 2011, however, things changed. Mr Carrington revoked the powers of attorney he had granted in favour of Mrs Carrington and appointed new attorneys. He executed a new will. He also applied to the Family Court for dissolution of marriage and a division of relationship property.

[5] Mrs Carrington claims that Mr Carrington, who is elderly, lacked the necessary mental capacity to undertake these actions. She says that they were undertaken as a consequence of Mr Carrington being subjected to undue influence by one of his adult children. As a result, Mrs Carrington filed an originating application in this Court in June 2011. The second amended originating application seeks declarations under "the Declaratory Judgments Act 1908, declarations at common law, and orders under the inherent jurisdiction of the High Court that are *analogous* to orders under the [PPRA]" (emphasis added).

² His strike out application is supported by interested parties B and C.