

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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W[...] v Williams-Ashman N O and Others (823/2020) [2023] ZASCA 44 (31 March 2023)

Today, the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal against a decision of the Western Cape Division of the High Court, Cape Town (the high court).

The issue before the SCA was whether the appellant had been deprived of property, within the meaning of s 25 of the Constitution, by reason of s 2B of the Wills Act 7 of 1953 (the Wills Act) and whether the deprivation effected by s 2B lacks sufficient reason and is therefore arbitrary.

The appellant, J[...] M[...] W[...], was married to N[...] J[...] W[...] (née C[...]) on 11 June 2011. Days before their marriage, N[...] W[...] made a will. She bequeathed her entire estate to the appellant. In August 2016, the appellant and N[...] W[...] agreed that their marriage had irretrievably broken down, and they signed a ‘consent paper’ that recorded their agreement as to the division of assets upon their divorce. A final decree of divorce was granted by the Regional Court, Cape Town (the regional court), on 24 October 2016. On 8 December 2016, N[...] W[...] committed suicide. Her death occurred less than 3 months from the date of her divorce from the appellant.

Section 2B provides for the disinheritance of a previous spouse should the testatrix die within a 3 months period from the dissolution of her marriage. Section 2B then provides a carve-out. If it appears from her will that the testatrix intended to benefit her previous spouse, notwithstanding the dissolution of their marriage, then that intention will be given effect to. The disinheritance of the previous spouse by operation of law is then not of application. The paramountcy of the testatrix’s intentions, expressed in her will, trumps the presumptive intention that a testatrix who dies within 3 months of the dissolution of her marriage would not have wished to benefit her previous spouse. The SCA referred to this provision in s 2B as ‘the paramountcy carve-out’.

The appellant challenged s 2B on the basis that it amounted to an arbitrary deprivation of his property because s 2B limits the ascertainment of the testatrix’s intention to benefit her former spouse to her will. Section 2B does not allow the consideration of relevant evidence outside of the will to ascertain the testatrix’s intention.

The SCA held that this limitation in the paramountcy carve-out is justified by the need to treat a duly executed will as dispositive of the testatrix’s intention. It held that there is nothing

arbitrary in so doing. Furthermore, held the SCA, the limitation is supported by sufficient reasons in that it limits disputes as to what the testatrix intended by stipulating that the will is the authoritative and binding expression of the testatrix's intentions. This fosters certainty and curtails fraud, when the testatrix can no longer speak for herself. That the appellant would seek to engage a more wide-ranging exploration of evidence to ascertain the testatrix's intention would undermine these durable principles, so long part of our law. The appeal was accordingly dismissed.

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