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IN THE FAMILY COURT
AT AUCKLAND

I TE KŌTI WHĀNAU
KI TĀMAKI MAKAURAU

FAM-2018-090-000754
[2023] NZFC 10573

IN THE MATTER OF	THE FAMILY PROTECTION ACT 1955
IN THE MATTER OF	THE ESTATE OF RAYMOND VINCENT HALL
BETWEEN	LANCE CLINTON HALL Applicant
AND	ALAYNE CATREANA HALL TANIA MONICA HALL NELLIE DIANA HALL Respondents
AND	MARGARET HINEMOA HALL RAYMOND PHILIP HALL DANIEL RAYMOND VINCENT HALL (DECEASED) LEANNE LUCILLE HALL Other Parties

Hearing:	14 October 2022
Appearances:	K J Nally for the Applicant Respondents in Person N Walker Counsel to Assist
Judgment:	24 April 2023

RESERVED JUDGMENT OF JUDGE KEVIN MUIR

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[1] At one level this case is about the role of Tikanga in this Family Protection Act claim. I was urged to apply the concept of mana ōrite apply to the Will of the late Raymond Hall Snr. What if any weight should I give to it or any other relevant tikanga when considering whether Mr Hall breached his moral duty to provide for the support or maintenance of his children, particularly the claimant, his youngest son Lance Hall?

[2] Raymond Hall Snr was pākehā. His late wife Margaret Reremoana Hall (nee Toko) who died suddenly on 8 October 1985 was Māori of Ngati Whatua and Ngāpuhi descent. Mrs Hall died on the day of her youngest son Lance's 13th birthday. She left behind eight children, Diana (Nellie) Hall, Tania Hall, Alayne Hall, Daniel Hall (who died in September 2022), Raymond Hall Jnr (Raymond), Leanne Hall and Margaret Hall who are identical twins, and the claimant Lance Hall.

[3] When Mr Hall died of cancer on 19 December 2017 Lance was in prison, and he was granted compassionate leave to visit his father before his death.

[4] Mr Hall's last Will dated 6 December 2017 included the following relevant provisions:

(a) Mr Hall's daughters Alayne, Tania and Diana were appointed as executors and trustees.

(b) A gift of $50,000 to his son Raymond Hall.

(c) A gift of $75,000 to his son Daniel Hall.

(d) A gift of $25,000 to each of his granddaughters (the children of Lance) Hinemoa Hall and Te Rangimarie Hall.

(e) A gift of $500 to Hospice IBD

(f) A gift of his genealogical records to his granddaughter Raveena Nand.

(g) The residue of his estate was to be divided into five equal shares between Tania, Alayne, Diana, Leanne and Margaret.

[5] It was recorded at clause 8 of the Will that he had made no provision for his son Lance:

> "8. My son Lance Clinton Hall shall receive nothing from my estate and is not beneficiary of this my will because Lance Clinton Hall at the height of his drug running career boasted in a big loud voice that he wants nothing from my estate and also he has attacked and assaulted me on three different occasions. So he has no access to any of my properties."

[6] Probate was granted at the High Court, Wellington on 19 July 2018. On 4 December 2018 Lance filed his claim under the Family Protection Act.

[7] I do not know whether Mr Hall executed any Wills prior to 6 October 2017. The only Will that was exhibited in evidence was his final Will. I enquired during the hearing and a Will dated 6 October 2017, which was on virtually identical terms to his final Will was produced as Exhibit C. A Will dated 30 November 2017 was also produced as Exhibit D. In that penultimate Will he left his genealogical records to Raveena Nand. The gift of $500 to Hospice IBD was made. The residue of his Estate was left to Leanne Hall only. The November 2017 Will also contained clause 8 as its final clause recording his reasons for excluding Lance.

Estate Assets and Liabilities

[8] The executors Alayne, Tania and Diana were self-represented. The only party represented by a lawyer was Lance, although the Court appointed Ms Walker as lawyer to assist the Court. Unfortunately, possibly because of a lack of legal advice and guidance, the evidence that was before the Court as to the assets and liabilities of the estate was deficient. There were also other significant evidential gaps, including a lack of information as to the assets that had been held by Mrs Margaret Hall at the date of her death and what happened to those assets.

[9] It became clear during the hearing that some of Mr Hall's children had concerns about assets that were transferred shortly before his death and some had

concerns about Mr Hall's capacity both at the time of those transfers and at the time his Will was executed. Some of his children also believe they have claims or issues that might have justified a constructive trust claim in relation to assets which were held by Mr Hall and disposed of during his lifetime. No relevant applications about those issues were before me and I did not have jurisdiction to deal with those issues in any event. I am not encouraging the whānau to pursue those matters – far from it. It is my hope that this judgment will help them heal and come together again as a family.

[10] The evidential gaps left me in a position where I could not be certain as to the value of Mr Hall's estate, either at the date of his death or now. The information that I did have is set out in paragraphs [11] to [16] below.

[11] At the date of his death Mr Hall's principal asset was his home at 11A Beatrix Street. In appraisals prepared by Harcourts Real Estate dated July and October 2022 it was attributed a current market value of between $900,000 and $950,000.[1] The property had a rating valuation of $1,240,000 in a One Roof estimate which was attached to the original affidavit of Lance Hall.[2]

[12] Beatrix Street was acquired by Mr Hall in September 2001 and was subject to a mortgage to TSB Bank at that time.

[13] On 18 February 2014 a variation of that mortgage was registered against the title. The mortgage originally had a priority sum of $160,000 and a TSB Liberty Loan Contract indicated that the maximum amount of credit available under the TSB loan was $100,000.[3]

[14] A variation of the TSB mortgage against Beatrix Street was registered at the same time as a property at 17 Neta Grove was acquired by Katui Corporation Limited (Katui Corporation).[4] Katui Corporation is a company which was held by Mr Hall as

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[1] The market appraisals were produced during the hearing by the executors. Mr Nally for Lance submitted registered valuations should be obtained by the court. I indicated that I would accept the appraisals as a guide to current value. The best determinant of the value of the land owned by the estate may come if it is sold.

[2] B129; the valuation appears to be dated 4 August 2021.

[3] B80 and 81.

[4] B143 transfer to Katui Corporation 19 February 2013, Exhibit G title to 11A Beatrix St with the variation of mortgage on 18 February 2013 .

to 999 shares and Alayne Hall as to one share up until 2017. On 9 October 2017 Mr Hall's shares were transferred by way of gift to Diana, Tania, Leanne and Margaret who received 200 shares each and Alayne who received a further 199 shares.

[15] The Neta Grove property owned by Katui Corporation is mortgage free.[5] It had a "One Roof" valuation of $800,000 as at 8 April 2021. The financial accounts for Katui Corporation include in "*Non-current liabilities*" a TSB Bank loan. The balance of that loan was $212,092 in 2017, $206,509 in 2018, $200,741 in 2019, $194,002 in 2020 and $175,074 in 2021.[6] A TSB Bank statement dated 8 June 2020 addressed to the executors of Mr Hall's Estate showed a debt with an opening balance of $200,471.21 as at 1 April 2019, having been reduced by payments of interest and capital to $194,002.28 by 8 June 2020.[7]

[16] It was apparently assumed by the executors and the applicant that the debt secured over Mr Hall's Beatrix Street property was a liability of the Estate. It appeared to me while preparing this judgment that it was more likely to be a liability of Katui Corporation as shown in Katui Corporation's financial statements. I therefore issued a Minute inviting additional submissions on the issue.

[17] My Minute also addressed an apparent additional asset which was not included in the narrative affidavits or pleadings filed. The accounts of Katui Corporation showed a shareholder's current account debt owed to Mr Hall of $84,692. By 31 March 2017 the debt had been reduced to $75,000. The balance of that shareholders current account would have been an asset of the Estate at the date of Mr Hall's death. I do not have the figure for the value at the date of death, however, by 31 March 2018 the debt had reduced to $73,850. By 2019 it was $74,223. In 2020 it was $74,370.

[18] In the 2021 accounts "*cash drawings*" of $74,370 are shown eliminating the "*Estate of Raymond Hall*" balance.[8] There is a new "*cash deposit*" attributed to "*the shareholders*" of $74,370. In the absence of an explanation about that transaction it

[5] B143 certificate of title NA129D/255.
[6] B149–205 financial accounts for Katui Corporation Limited.
[7] As at 18 March 2022 the TSB Bank loan account debt was $185,095.97 – B229.
[8] B204.

seemed likely that the balance due to Mr Hall's Estate was still $74,370. There was no evidence of any corresponding deposit into Mr Hall's bank accounts nor is there evidence of any other payment to Mr Hall's Estate to repay the debt at that time.

[19] I had no evidence about who has been occupying the 11A Beatrix Street home, whether any rental has been paid, or what if any outgoings have been paid since Mr Hall's death. I invited the executors to engage with Avondale Chartered Accountants Limited, who have been responsible for preparing the financial accounts for Katui Corporation as they were likely to have some knowledge of Mr Hall's history and affairs.

[20] If any issues subsequently arise about the value of the assets of the Estate which the executors are unable to resolve satisfactorily, I will grant leave for them to seek further directions from me. In this judgment however, given the relatively modest assets of the Estate I consider I can justly deal with Lance's application for further provision by considering the relative benefits received by the whanau members or any compensation to be awarded (should I make any award) in percentage terms.

[21] In clause 3 of his last Will, Mr Hall recorded:

> "Currently I have the following properties:
>
> (a) Family home at 11A Beatrix Street, Avondale, Auckland;
>
> (b) Investment property at 17 Neta Grove, Henderson, registered under company Katui Corporation Limited, where I am a director;
>
> (c) Regina Pacific shares, Auckland Co-Op Taxi shares;
>
> (d) Some cash and Bonus Bonds, ASB Bank, ANZ Bank and TSB Bank."

[22] In fact, only the Beatrix Street property, the items listed in paragraph 3(d), and the debt owed by Katui Corporation were owned by Mr Hall at the date of his death.

[23] Diana Hall filed an affidavit on behalf of the executors in response to a Court direction that information concerning the assets and liabilities of the Estate be provided.

[24] Assuming that the mortgage secured over Beatrix Street was in fact a liability of Katui Corporation and assuming that the shareholder's current account shown as owed by Katui Corporation to Mr Hall was an asset of his Estate, it appeared that the net value of the assets in his Estate adopting current valuations for Beatrix Street would lie somewhere between $977,058.79 assuming a value of $900,000 for Beatrix Street and $1,277,058.79 assuming a value of $1,240,000 for Beatrix Street.[9]

[25] In the affidavit that she swore on 29 September 2022, Diana stated that:

> "… Katui Corporation to date has covered all expenses to the Estate of Raymond Vincent Hall (deceased). And is now at a point struggling to keep up with the reoccurring expenses of the Estate". (sic)

[26] There was no information as to what expenses, if any, had been incurred by Mr Hall's Estate since his death. I did not know how rates, insurance or other outgoings had been paid. I did not know whether there had been any income in the form of rental to assist with or to offset those expenses. I did not know whether Diana was referring to the mortgage payments which are properly an expense of Katui Corporation rather than of Mr Hall's Estate.

Additional Information from the Executors

[27] On 25 November 2022, Alayne Hall filed an affidavit labelled "*Executor's Evidence Provided by Alayne Catreana, 23 November 2022*". At the same time Diana Hall filed a document which was said to be in response to my memorandum of 26 October 2022 labelled "*Memorandum Provided by Nellie Diana Hall*". She attached to that memorandum a letter dated 11 November 2022 from Avondale Chartered Accountants Limited along with medical evidence to explain her delay in filing. I had allowed time for the other parties to file in response, but no response was received.

[28] As a result of the information filed, I am satisfied on the balance of probabilities that the mortgage secured over Beatrix Street was and is properly a liability of Katui Corporation and not of the Estate.

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[9] Including the Katui Current Account asset at $74,370 and adopting the 18 December 2017 ANZ Freedom account balance of $2,688.79.

[29] The letter from Avondale Chartered Accountants Limited was signed by its director, Colin Kyle. In it he advised that the balance of $74,370 held by the Estate of Raymond Hall was:

> "Transferred to the five shareholders in Katui Corporation Limited in association with clause 7(e) from the last Will of Raymond Vincent Hall, that stated that the "*residual estate*" be distributed in equal shares to the five daughters. Katui Corporation Limited's bank account had insufficient funds to pay the amount out in cash. All the shareholders are all the daughters listed in clause 7(e), and thus a journal was completed to transfer the holdings."

[30] Clearly that distribution to the residuary beneficiaries ought not to have been made while these proceedings were pending. That transaction was a breach of the Executors duty to preserve the assets of the Estate pending resolution of this claim. Fortunately, the residual assets of the Estate (principally the equity in Beatrix Street) are sufficient to meet any relevant claims. I have no information as to who authorised the distribution, but I assume it was made as a result of advice given by Mr Kyle – advice that ought not to have been given without legal advice being first obtained.

[31] Alayne's affidavit said, "*In my capacity as an Executrix, I have upheld caretaker responsibilities to maintain the Estate …*"

[32] It is unclear what those "*caretaker duties*" have been. However, Alayne says that she is a lecturer in research employed by AUT in Auckland. That is where her workplace is, but her role "*enables me to work from my home in Dargaville*". It is clear that she has been staying at 11A Beatrix Street on a "*regular and consistent basis*". She acknowledges that some members of the whanau believe she should have been paying a market rental for the time that she stayed at Beatrix Street. She rejects that proposition saying that the home does not comply with the Healthy Homes Standard in the Healthy Homes Act 2017. She has however, been making regular payments of $200 per fortnight "*to cover expenses*". She annexed bank statements showing that 79 payments to a total of $15,800 had been made. She said, "*I'm committed to keeping these automatic payments in place until such time that my Executrix caretaking and maintenance responsibilities cease*." She said that her father's belongings remained in place at the Beatrix Street property and that all that she kept at the home was her car, some clothing items and a packed suitcase.

[33] I infer from that evidence that Alayne is regularly and frequently using the home as a base when she is working in Auckland. It seems reasonable that she should be making a contribution akin to a rental payment regardless of whether or not the property meets the Healthy Homes Standard. That is not to say that I am finding that it is reasonable that she should pay a market rent. That is not an issue before me. I would however question whether it was appropriate for her to seek any "*refund*" from the Estate for the $200 per fortnight that she has been paying, given she has had the benefit of the use of the home.

[34] In the absence of reliable evidence as to the outgoings incurred by the Estate since Mr Hall's death, I will assume for the purposes of this judgment that no significant additional liabilities have been incurred.

[35] The letter from Mr Kyle of Avondale Chartered Accountants Limited says that the mortgage payments have been met by Katui Corporation from the rental it receives from 17 Neta Road of $420 per week. There is no indication in his letter that any Estate funds have been applied to meet any liabilities for assets outside the Estate since Mr Hall's death. There is no information to suggest that Katui Corporation or any other third party has been paying any outgoings in relation to Mr Hall's Estate such as insurance or rates over Beatrix Street. It appears that the $200 per fortnight paid by Alayne has been the only source of funding.

Other Assets Outside the Estate

[36] My jurisdiction only extends to any assets in Mr Hall's Estate. I may however be able to take account of any assets that Mr Hall gifted to any of his children during his lifetime when I consider the nature and extent of the moral duty he had to the claimant and any other beneficiaries or potential beneficiaries when he made his last Will.[10]

[37] In April 1998 3.74 hectares of land at Aranga, north of Dargaville was purchased as tenants in common in equal shares by Mr Hall, Tania, Margaret, Leanne

[10] *Mulford v Mulford* [1947] NZLR 837 at 840.

and Alayne. On 12 September 2017 Mr Hall's interest in the Aranga property was transferred to Diana. Part of the land is a forestry block planted with Radiata pine.

[38] The land at Aranga is a point of contention between the members of this whānau. In an affidavit that he filed in September 2021 Daniel said that Mr Hall had:

> "Asked his kids to repay him the money he forfeit (sic) to purchase the land if they were interested in investing … five siblings had brought into the land, eventually paying my father back all the money owing to him 5K each. Raymond, Tania, Alayne, Leanne, Margaret … Lance Hall and Diana Hall (Nellie) opted out."

[39] Daniel was never registered as a proprietor of the land and he did not give evidence that he had made a financial contribution to it. Daniel's evidence was that his contribution was to develop the land if he was interested in a share, which he said was "*based on a gentleman handshake*" (sic). He said his father purchased a small amount of pine seedlings, enough to cover one acre of the land in about 1989. Daniel was to maintain the trees as he lived in the area, with some help over the Christmas holiday season from various family members. He lived on the land from 1992, and from 1994 he acquired more pine seedlings to plant the rest of the land. He said that he made other contributions to the property over the years including setting up an alternative power system with solar panels and extending a hut that was on the land. At some time prior to his wife's death in 2016 Daniel agreed to move from the property, but he said that he returned to the block in 2019 "*to stake my claim and secure my trees I had planted*". He said that at some point contractors were sent by one of his siblings to harvest the block but he sent them away. He was eventually issued with a trespass notice.

[40] Daniel believed he had a first option to harvest the block and that he had acquired the cutting rights as part of the initial "*handshake deal*" with his father.

[41] The accounts of Katui Corporation include as part of their plant and equipment, pine trees with cost price of $191. It appears from Lance's evidence about that land that he believes that Katui Corporation is the owner of all the pine trees.[11] Ownership of the trees or of any cutting rights is not an issue that I can resolve beyond finding

[11] B136, para 18 of his affidavit 26 July 2020.

there is no evidence Mr Hall had any rights to or interest in the trees by the date of his death.

[42] The other assets of Katui Corporation as shown in its depreciation schedule, apart from Neta Grove, are a taxi meter, a kitset carport and a Hilux Surf Motor vehicle. There is some office equipment and plant and equipment including chainsaws, a generator and the like. The total cost price of the assets shown in the depreciation schedule excluding the Neta Grove house, is $22,073 and the book value after depreciation is $2,666.

[43] I do not know the value of any cutting rights over the trees nor do I know who owns those cutting rights but I find, on the balance of probabilities, they are not an asset of Mr Hall's Estate, nor are the shares in Katui Corporation.

The Law

[44] Lance brings his claim under the Family Protection Act 1955. Under s 4 I am required to consider whether proper maintenance and support has been provided for Lance by Mr Hall in his Will – whether Mr Hall breached a moral duty that he owed to Lance.[12] In considering whether or not Mr Hall breached his moral duty I must apply the standards of a wise and just will maker considering what would be adequate provision for the proper maintenance and support of eligible claimants. I can take account of current social attitudes which may change from time to time. The standard nonetheless should be an objective one.[13]

Tikanga

[45] In oral submissions before me Raymond urged me to take into account the concept of mana ōrite – a concept which he explained required equality of benefits within a whānau. Raymond submitted that his whānau was in part a product of a process of assimilation which had a particular impact on his late mother Mrs Hall. He said that Mrs Hall had been subjugated to the point where she was unable to exercise

[12] *Allardice v Allardice* (1910) 29 NZLR 959.
[13] *Angus v Angus* [1981] 1 NZLR 126 (CA); *Williams v Aucutt* [2000] 2 NZLR 479 (CA).

her tikanga. He said this happened because he had "*a very racist father*". In Raymond's submission Mr Hall demonstrated his disregard for Te Ao Māori in his Will by being exclusive rather than inclusive. Raymond's view is that the tikanga of his tupuna was not honoured by his father in his Will, and in particular, his father had ignored or abandoned an obligation to observe mana ōrite – which would have seen all of Mr and Mrs Hall's tamariki treated equally under his father's Will.

[46] He described in his submissions (but not in an affidavit) how their mother had worked long hours in the market garden business and in split 24-hour shifts in the taxi their parents had owned as well as being responsible for feeding and nurturing the family. The limited exposure that Raymond and his siblings had to Te Ao Māori was the result of their mother's efforts, who for example ensured that they were able to participate in kapa haka. Raymond explained with regret that the whānau never went to the Marae – to their mother's tūrangawaewae – during her lifetime.

[47] In Raymond's submission Mr Hall's Will ought to have taken account of the fact that he alone inherited the assets that he and Mrs Hall owned together and he ought to have applied mana ōrite when drafting his final Will. He advocates for an equal division of his father's assets as a result.

[48] There is no reference to any aspect of tikanga in the Family Protection Act 1955. Tikanga Māori can and should inform legal decisions in Aotearoa where it is relevant. However, as the Supreme Court recently said in *Ellis v R*:[14]

> [98] The first point is that the application of tikanga in the common law can be limited or excluded by statute, although this requires an unambiguous statutory provision. This does not give the full picture however. It is generally accepted that there is a presumption that statutes should be interpreted consistently with Te Tiriti as far as possible. Because the Tino Rangatiratanga guarantee in Article 2 is generally taken to import Māori rights to live by and benefit from tikanga, it has been argued that it follows that statutes should be interpreted consistently with tikanga as far as possible.

[49] Later at paragraph [116]:

> [116] At this point in the development of the law, which is in a state of transition, it suffices to reiterate that tikanga as law is part of the common law of Aotearoa/New Zealand. As I discuss below what this means in practice will

[14] *Ellis v R* [2022] NZSC 114.

> need to be worked out on a case by case basis in terms of the normal common law method of incremental development.
>
> ....
>
> [117] As an overall comment, tikanga will need to be considered where it is relevant to the circumstances of the case. It will not have to be considered in cases where it is not relevant or where consideration of tikanga will not or cannot assist, such as when it would be contrary to statute or contract binding precedent. In terms of the usual common law method, prior authorities on tikanga will be useful in ascertaining when tikanga may be relevant in future cases.

[50] Tikanga has been observed or discussed in the context of claims under the Family Protection Act in the past. Heron J in the High Court in *Re Kupa*[15] was considering a claim about a deceased with interests in Māori land who died leaving the whole of his estate to one daughter. The deceased had 10 children, nine of whom survived him. The evidence in that case included a letter from Professor Mead of Victoria University, Wellington emphasising that:

> "If a Māori parent is following tikanga Māori then provision must be made for every child to inherit tūrangawaewae which is by right of birth. This must often take the form of interest in a land block or several blocks. Tūrangawaewae is established on land handed down the ancestral line and access to it by its birth."

[51] Heron J recognised the importance of ancestral land as "*taonga tuku iho*" – an asset with special significance to Māori. The Judge cited with approval the statement from *Little v Angus*: "*Changing social attitudes must have their influence on the existence and extent of moral duties*."[16]

[52] In *Marino v Macey*[17] the High Court held that the deceased had given prominence during her life and in her Will to whanaungatanga and Hauititanga. The High Court found that the Family Court Judge was obliged to give those principles equivalent prominence in his decision.

[53] In contrast, in *Van Selm v Van Selm*[18] the Family Court was dealing with a deceased Māori parent who did not view tikanga Māori as being of importance. The

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[15] *Re Kupa* (1996) 15 FRNZ 312.
[16] *Little v Angus* [1981] 1 NZLR 126.
[17] *Marino v Macey* [2013] NZHC 2191.
[18] *Van Selm v Van Selm* [2015] NZFLR 693, 28 August 2013 per Keane J.

Court declined to treat the land in question as taonga tuku iho. It should be noted however, that there were a number of other significant reasons why the Judge rejected the submission that a farm which a son had inherited to the exclusion of the testator's two daughters should be placed in a trust set up under the Te Ture Whenua Trust Act 1993 to ensure the security of the land for future generations.

[54] All of those cases involved will makers who were Māori. However, the Supreme Court in *Ellis* has made it clear that tikanga can, and should be applied wherever it is relevant.

[55] I may apply appropriate or relevant tikanga when considering the moral duty owed by Mr Hall. In considering what provision a "*wise and just testator*" should make in their Will, the Courts have often spoken of placing themselves "*in the testator's armchair*".[19] A question that I will need to address is whether Mr Hall from his metaphorical armchair ought to have considered, or applied any appropriate tikanga when making his Will in order to meet his moral duty to his children.

Disentitling Conduct

[56] Under s 5(1) of the Act I may refuse to make an order "… *in favour of any person whose character or conduct is or has been such as is in the opinion of the Court to disentitle him from the benefit of such an order*". Given the provisions of Clause 8 of Mr Hall's Will, this section is of some importance.

[57] I note it is relatively uncommon for there to be a finding that there has been "*disentitling behaviour*". Criminal conduct alone will not necessarily disentitle Lance from relief.

[58] The claimant in *Re Smith* was the deceased's only son and was excluded from his mother's will because of criminal convictions and time spent in prison.[20] There was no suggestion that any of the criminal conduct was against the deceased nor that

[19] For example, *Williams v Aucutt* [2000] 2 NZLR 479 at [70].
[20] *Re Smith* (1991) AFLNZ 459 (HC).

it affected her in any way other than through the normal disappointment and anguish of a mother at her son's wrongdoing. The claim succeeded.

[59] In contrast here, Mr Hall's reasons for excluding Lance included his assertion that he was "*attacked and assaulted*" by Lance on three different occasions and that Lance had "*boasted in a big loud voice that he wants nothing from my estate*".

[60] Disentitling conduct has been described as:

> "… Misconduct towards the testator, or character or conduct which shows that any need which an applicant may have for maintenance is due to his or her own default."[21]

[61] In light of Mr Hall's evident concern at Lance's "*drug running career*" I refer the decision of Katz J in *Rippey v Hunt & Ors*[22] where His Honour accepted that there was no breach of moral duty in that case because a significant amount of support had been provided to the claimant during the deceased's lifetime. However, Katz J disagreed with the view of the District Court Judge that there had been disentitling conduct on the part of the claimant who had persistently grown cannabis on farmland owned by his parents despite their disapproval. The Court noted an occasion when the claimant's father had returned a bag of cannabis which had been found to his son and that the claimant's parents had not insisted on him leaving the farm nor had they attempted to destroy cannabis plants when found, finding in that an indication that they had "*somewhat reluctantly tolerated their son's behaviour, albeit complaining about it from time to time*".[23]

[62] Ultimately in assessing whether there has been disentitling behaviour of such a nature as to effectively extinguish the moral duty that Mr Hall owed to Lance, I will need to consider whether Lance's conduct was so repugnant as to effectively sever the bond of obligation between father and son. It will not be a matter of my looking at any incident or incidents in isolation. I will need to consider the complexities of their particular relationship and history.

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[21] *Re Will of Gilbert* (deceased) (1946) 46 SR (NSW) 318 (SC) applied in *Re Worms v Campbell* [1953] NZLR 924 (SC and CA).
[22] *Rippey v Hunt & Ors* [2014] NZHC 1964 at [91]–[94].
[23] At [94].

Claims by Other Tamariki

[63] Under s 4(2) of the Act Lance's claim may be treated as an application on behalf of "*all persons who might apply*". I note that in *L N J v C M T G*[24] an application by one of the deceased's children was treated as being made on behalf of his two siblings even though they had not filed a separate statement of claim. In that case the siblings had sworn affidavits which made it clear they wished to be included in the application.

[64] The affidavit that Daniel filed dated 10 September 2020 made it clear that he intended to make a claim, against "*his entitlement to the proceeds of sale*" of the Beatrix Street property.

[65] The affidavit that Raymond filed dated 3 October 2022 makes it clear that he wishes to bring a claim against his father's Estate. He expresses the view that the Estate should be shared evenly between all the children of Raymond and Margaret Hall.

[66] An issue that I will need to consider is whether additional provision should also be made for Raymond and for the Estate of Daniel.

Procedure

[67] The seven surviving children of Mr Hall and Margaret Hall Snr – Diana, Tania, Alayne, Raymond, Leanne, Margaret and Lance all appeared at the hearing. Only Lance had filed a formal application for relief. Affidavits had been filed by Diana, Tania, Lance, Daniel, Alayne and Raymond. In addition, Lance's daughter Hinemoa Hall had filed an affidavit. Unfortunately, some of the affidavit evidence was not included in the bundle and some of the affidavit evidence had not been served on all parties. Short adjournments were taken to ensure that everyone had the relevant information.

[24] *L N J v C M T G & Ors* FC Rotorua FAM-2010-063-11, 29 August 2011.

[68] I had explained to the parties at a pre-trial conference that I would only be able to consider evidence that had been filed in affidavit form. No one sought to cross examine any of the witnesses. That was appropriate as cross examination is customarily discouraged unless there are unusual circumstances.[25]

[69] A timetable had been set for the filing of submissions. Submissions had been filed by counsel for the applicant and by the lawyer appointed to assist the Court. Raymond requested an adjournment to allow a cultural report to be prepared on aspects of Tikanga. What he was essentially seeking was the opportunity for expert evidence to be filed and or considered on the application of Tikanga to this claim under the Family Protection Act. I declined that application which was made very shortly before a hearing which had been set down in October 2021 and after almost five years had passed since Mr Hall's death. It was time for this whānau to have some resolution until it was therefore important the case proceed without further delay.[26]

[70] I instead invited all of the whānau to address me in turn on any relevant matters including any relevant Tikanga, particularly Tikanga that were directly relevant to their whanau. I explained that I would consider the relevant affidavit evidence when making my decision, but that it was also important that they each had a chance to address me on any relevant matters.

Relevant Family Histories – Whakawhanaungatanga

Lance

[71] In his initial affidavit Lance described his education in West Auckland. He had left school at the age of 15, working in a number of occupations. He said his father had treated all of his children equally with no favourites. Lance thought he had gotten on well with his father during his formative years. He acknowledged his criminal history, saying he first spent time in prison when he was sentenced in 2002 for possession and manufacture of a Class B drug. At the time he swore his affidavit in

[25] *Re Meier (deceased)* [1976] 1 NZLR 257 at 257 and 258.
[26] I note that in future cases where Tikanga may be relevant it would be appropriate for directions to be sought at an early stage, or even at the time of filing the application as to (for example) any expert evidence that might be called about relevant tikanga.

December 2018 he had just been released from prison and was still on parole. At the time of hearing he was again a recently released prisoner. I inquired as to whether he would consent to his criminal record being obtained and made available to the Court and other parties, but he declined.

[72] He initially denied that he had physically assaulted his father and he denied that he had boasted or told him that he wanted nothing from his Estate. He stated his belief that the net equity in the family home at 11A Beatrix Street should be shared equally between he and his seven siblings. In the affidavit that he swore on 21 July 2021, Lance admitted hitting his father "*on the jaw on one occasion and also that I verbally abused him on two occasions*". He said his actions were a result of his belief that his father had allegedly sexually abused one of his sisters many years previously. He said that was an issue that he had been attempting to resolve through consultation with a psychologist during his time in prison.

[73] Lance confirmed (appropriately) during the hearing that he was not seeking to disturb the gifts that his father had left to his daughters Hinemoa and Te Rangimarie in his Will.

Tania

[74] Tania Hall described her father as a hard-working man who lived a frugal life. He and her mother provided well for their children while growing up. She was concerned at the effect of the trauma on Lance of losing his mother at such a young age. Both Tania and her sister Diana were of the view that their father's Will and wishes should be upheld. However, Diana said that she intended to gift Lance $15,000 from "*her share*" of the proceeds of sale of Beatrix Street.

Daniel

[75] Daniel's affidavit addressed the work accident his father suffered while working for the New Zealand Power Board which resulted in him losing his left arm from his elbow down. He described a good upbringing and memorable trips with a camper to where their mother was raised in Kaihu near Dargaville. Daniel had moved

north as a young teenager to live with his grandmother. When their mother died in 1985 Leanne and Margaret were only 16, Raymond was 17 and Lance was 13. From Daniel's perspective the purchase of the 10-acre block at Aranga was motivated by Mr Hall's wish to have somewhere for the whānau to stay when visiting their mother's grave at Kaihu. He described his work on that block over the years in some detail and his belief that he was entitled to an interest in the land and the cutting rights. Daniel was of the view that all of the beneficiaries including Lance Hall should receive an equal share in the Estate and that the Aranga land should be held for future generations.[27]

Margaret

[76] Margaret said she was writing her affidavit because she believed Lance should receive additional provision from his father's Estate. She described having to go to Lance's school with Raymond and Leanne to tell him that their mother had died on the day of his 13th birthday. She believed the death of their mother had a grave impact on the path of Lance's life. She noted that Lance had been sent to Whakapakari Camp on Great Barrier Island in around 1989. It is her belief that Lance suffered physical and psychological abuse while he was at that "*youth camp*". Margaret and her twin sister Leanne had gone to live with their sister Diana after their mother's death. She found her father to be withdrawn "*with no conception of love and affection*". She shares Lance's belief that her sister had been sexually abused by their father.

[77] She described the day that she went to pick Lance up from the wharf after his time at Whakapakari Camp. She observed him to be fearful, afraid to leave the ferry – he had thought he was dead. She believed that Mr Hall had failed to provide for Lance through his teenage years and as a result Lance needed significant psychotherapy, drug and alcohol rehabilitation and support.[28]

[78] Margaret was concerned about the transfer of assets she believed her mother had contributed to her father's Estate. She referred to "*the strong Tikanga and cultural*

[27] I have no jurisdiction over the Aranga land. It is not an asset of Mr Hall's Estate.
[28] Lance did not discuss his time at Whakapakari in his affidavits. He did confirm his experiences during his korero to me in the hearing, but he was not sworn in as a witness.

values bestowed upon me by my mother … (which) would never allow this to occur under these values." Margaret had also requested that a cultural impact report be prepared.

Raymond

[79] Raymond expressed a wish that his father's Estate be shared equally between all of the children of Mr and Mrs Hall. He described the whānau's sadness at the death of their brother Daniel and of his belief that the whānau should meet to discuss matters further.

[80] Raymond also set out reasons that he believed he was entitled to a share in the Aranga land describing himself as a "*founding shareholder*". He said he had paid for his share in the purchase of "*the land at Kaihu, Aranga, Northland in February 1989*" and that as a result he was registered as a shareholder. "*As agreed by my late father Raymond Vincent Hall, all of his children who contributed to the purchase price of the land were to be listed as shareholders*".[29] He annexed historical search information from "*Katui Corporation Limited (S 52208) Removed*", which showed he, Mr Hall, Alayne, Margaret and Tania were appointed as directors of that company on 7 June 1992 and that they each held 1,500 shares. Those records evidently relate to a company that was removed from the Companies Office records.

[81] The accounts for the current company, Katui Corporation at 31 March 2017 show Mr Hall as sole director and as holding 999 shares. In the 2018 accounts Diana is shown as the sole director and Diana, Alayne, Tania, Leanne and Margaret hold 1,000 shares each.[30]

[82] Raymond expressed a view that Lance's older siblings had a duty to continue to support Lance in the absence of their parents. He said:

> "Our whānau continues to deal with the intergenerational effects of the premature death of our mother; this has had a significant impact on us all, particularly Lance who was placed into state care community programmes and a subsequent prison sentence which he has been serving for many years. To

[29] 6 September 2021 – Raymond Phillip Hall.
[30] B150 and 163.

> remove Lance from an entitlement of our parent's Estate completely severs that important whakapapa connection to his father, mother and remaining siblings and further exacerbates his disconnect from our whanau and his identity."

[83] Raymond attributes Lance's "*unfavourable actions and words*" towards his father to "*the depth and control that his addiction had on him*". Raymond emphasised the importance of Tikanga to the whanau saying:

> "As a whanau we are deeply rooted with our Māori whakapapa and continue to have access to our whenua and marae, Tama Te Uaua. Notwithstanding this, my siblings understand the value of immersion in Te Ao Māori and a whānau centred approach to resolving many conflicts and matters that we have been faced with over the years. It is imperative that we remain committed to finding a resolution that focuses on the whānau as a whole as the best outcome. I stand by my statement that equality is the best option for the healthy outcome of this whanau."[31]

[84] When he addressed the Court as part of his whakawhanaugatanga Raymond emphasised the importance of the concept of mana ōrite in the context of this family dispute.

Leanne

[85] Leanne described in some detail the significant care that she gave to her father during his final illness. She acknowledged support that she had from Diana and Tania during this time. Diana was having significant difficulties with her own health including time in hospital which limited the support she could give. Leanne noted that Mr Hall and Tania had had a falling out in the later stages of Mr Hall's illness. She said that there was a falling out between Alayne and her father. I have not recorded the details of these family differences in this decision, noting the warning in cases such as *Re Meier*[32] and *Hoffmann v Hoffmann*[33] against airing such differences which "*may merely deepen rifts in the family and dishonour the memory of the testator*".[34]

[86] Leanne explained the circumstances that led to her father changing his Will on 30 November 2017. She said she returned home from an appointment one day to be

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[31] Affidavit of Raymond Hall sworn 19 June 2020.
[32] *Re Meier (deceased)* [1976] 1 NZLR 257 (SC) at 258.
[33] *Hoffmann v Hoffmann* (1909) 29 NZLR 425 (SC) at 428.
[34] *Re Meier*, above n 32 at 258.

greeted by his lawyer, Sylvia Ding, who congratulated her as now being the executor of her father's Will. She expressed her displeasure, but Ms Ding told her that it was not up to her (Leanne) to choose the role.

[87] Leanne said that Mr Hall's final Will of 6 December 2017 was made a week and a half before his death and "*at this stage he is heavily medicated on an IV morphine drip that started to have effect on his mental state at times*".

[88] Mr Hall's last Will has been admitted to probate without any challenge. I do not have jurisdiction to determine whether he had capacity at the date that Will was executed. My task is to decide whether that Will represents a breach of his moral duty.

[89] Leanne said:

> "My father's Will also includes the work my mother had contributed to over her years working. It is a Will they built together and I'm aware my father having lived it out has the final say. But I also note the heart of my mother one who is not selfish and loved all her children equally therefore would never leave any of her children out of the Will."

[90] Leanne is of the view that Lance is entitled "*to his share of the Will*" – by which she means she believes he should have been treated equally to his siblings.

Alayne

[91] Alayne said that her parents had 14 grandchildren including her child, Tiana Trego-Hall who is now 21. Alayne was four months old when her father had a life-threatening accident working for the power board. Mr and Mrs Hall later purchased a property in a small town of the central North Island establishing market gardens. She describes those years as subsistence living with harsh conditions. She noted that despite the stresses her parents experienced, they worked hard to survive, raise their family of eight and overcome adversity in their lives. Over time the family moved to the outskirts of West Auckland and eventually to Te Atatu North. She describes the devastation the whanau experienced when their mother died at the age of 44 on Lance's birthday on 8 October 1985.

[92] She said that her father had on numerous occasions stated that half of what he owned belonged to her mother. She said he talked about his responsibility to ensure that his Will would have considered his wife's wishes. Alayne believes that Mr Hall made provision for his sons during his life that he did not make for his daughters. She believes that he assisted Daniel to establish a forestry business, assisted Raymond with financial support to achieve home ownership and assisted Lance into home ownership. That account is not accepted by Raymond or Lance. She also said there were differences or difficulties between Mr Hall, Daniel and Raymond and that Mr Hall had not had any contact with Lance since 2000.

[93] Alayne says that Mr Hall spoke to her about the provision he was making for Hinemoa and Te Rangimarie in his Will. He told her he believed that Lance would squander any inheritance monies and assets on poor lifestyle choices and that his daughters would be unjustly disadvantaged by their father's addiction behaviours, violent behaviours and criminal activities. She says it was for that reason Mr Hall decided that any provision for Lance would be divided equally between Hinemoa and Te Rangimarie.

[94] She described in detail Lance assaulting her father in August 2000 on a Friday evening when her father had been invited to her home for dinner. Lance arrived and became verbally hostile towards her father. His hostility intensified and she says, "*without warning Lance threw a heavy punch at our father striking him on his forehead*". She described a prolonged assault and said that when she visited her father some days later his injuries were clearly visible, his mood was low and he talked to her about an earlier incident when he said Lance had assaulted him in his (Mr Hall's) home in Dargaville.

[95] Alayne believes that Lance has been offered significant support by family members, including her, over the years when he has grappled with personal challenges. She considers that Lance has exhausted those family supports, and she considers that her father's concerns in his Will were warranted.

Diana

[96] Diana said she wanted to "*respect (her) father's last wishes*" and for that reason she wanted his Will upheld. However, she acknowledged Lance's disappointment and said she wished to gift Lance $15,000 on the sale of 11A Beatrix Street.

Hinemoa Hall

[97] Hinemoa is one of Lance's two daughters and the granddaughter of Mr Hall. She recalls spending a lot of time with her grandfather going fishing at Bailey's Beach and marking pine trees with paint at the family bach at Aranga. She recalls him sharing Cadbury lollies with her and her sister and that he was "*the best at making shortbread*". She and her cousins attended the annual Christmas function at the bowling club – something she looked forward to as she knew she would be spoiled. She said she continued to make an effort to visit her grandfather as an adult as often as she could. She rang him on the morning he died telling him that she would be over to visit for dinner only to receive a phone call five minutes later telling her he had died.

[98] Sadly, Hinemoa does not remember her father Lance playing a role in her life. There are very few good things that she remembers about her Dad. She accepts that her father's actions may have been influenced by the loss of his mother at a young age. She recalls her grandfather contacting her mother prior to his death and she notes with affection her grandfather apologising to her mother for her father's actions. She wants to uphold her grandfather's wishes – she believes that her father could or should have chosen to make better life choices and that if he had he would be in a better position now. Ultimately, she is grateful to know that her grandfather cared about her and her sister, "*In all honesty, that matters more to me than anything in this world*".

Lance's Conduct – Disentitling?

[99] There may be circumstances where an applicant's behaviour is not sufficient to disentitle them from any provision or preclude relief entirely, but where it has an adverse effect on the quantum of relief that is granted. Common circumstances include situations where the applicant and the deceased are estranged having not

maintained contact.[35] In *Re Green* the testator believed the applicant had disowned her parents. The Court found a number of the allegations unproven and held that the fact that there had been slight contact between the applicant and her parents, with a "*considerable loosening of the bonds*" between them, matters properly to be taken into account but which did not warrant complete exclusion from the testator's large estate.[36]

[100] I agree with the view expressed by the Supreme Court in New South Wales that in order for behaviour to be "*disentitling*" it must amount to:

> … Character or conduct relevant to the purposes which the Act is intended to serve, for example, misconduct towards the testator, or character or conduct which shows that any need which an applicant may have for maintenance is due to his or her own default."[37]

[101] In this case it is not disputed that Lance assaulted his father. I find on balance of probabilities there were two physical assaults. The one that has been described in detail in evidence was sudden and the violence that was used was significant.

[102] In many cases such an assault might well be sufficient to entirely disentitle a claimant child to any expectation of relief.

[103] However, in examining whether conduct is sufficient to disentitle any claim, I should adopt the viewpoint of a wise and just testator who is possessed of all the relevant information that Mr Hall had at the time he was making his Will.

[104] I agree that the question whether conduct is sufficient to disentitle an applicant to relief depends not only on the nature of the conduct itself, but also to some extent on the strength of their claim or need to provision from the Estate:

> "The stronger the applicant's case for relief, the more reprehensible must have been his conduct to disentitle him to the benefit to any provision."[38]

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[35] Patterson Law and Protection and Family Promises, 5th ed. Para 4.17.
[36] *Re Green* (dec'd) [1951] NZLR 135.
[37] *Re Will of Gilbert* (dec'd) (1946) 46 SR (NSW) 318 (SC).
[38] *Hughes v National Trustees* (1979) 23 ALR 321 (HCA) at 339 and 340.

[105] The difficulties and challenges that Lance faced following his mother's death on his thirteenth birthday were significant. He entered adolescence without the guidance of his mother. For his older siblings Mrs Hall had been their talisman and guide to Te Ao Māori.

[106] Mr Hall was probably acting with good intentions when he allowed his son to be sent to Whakapakari Camp. Lance was significantly affected by his time on the Island. I accept Margaret's evidence that Mr Hall failed to adequately provide for Lance (in an emotional and cultural sense) through his teenage years.

[107] Mr Hall was no doubt grieving the loss of his beloved wife himself. The evidence is that he remained emotionally and spiritually attached to her for the rest of his life. Some of his children believe that he was dismissive, or even disdainful, towards their connections with their mother's tipuna and their whenua.[39] I accept that Lance was deprived of the access to Te Ao Māori and tikanga that his older siblings enjoyed. That combined with the loss of his mother may well have contributed to Lance's alienation.

[108] Lance has been in prison for long periods of time. I do not know the exact nature of his offences but evidently they include serious drug offences. That alone would not be sufficient to amount to disentitling conduct. To the contrary, Mr Hall as a wise and just testator might well have reflected on the difficulties that Lance had faced following the death of his mother at such a young age and the fact that Lance – perhaps in part due to his criminal record – has no significant assets. He appears to be an adult child who needs both maintenance and support.

[109] In any event although Mr Hall referred to Lance's "*drug running career*" his main motivation for excluding Lance was that he had his belief that Lance had boasted that he wanted nothing from his Estate and had attacked and assaulted Mr Hall "*on three different occasions*".

[39] Although I note the purchase of the land at Aranga was motivated by a desire to be close to Mrs Hall's urupa at Kaihau and her tūrangawaewae, Tama Te Uaua.

[110] I have no evidence that he was assaulted by Lance on three occasions. I accept Alayne's evidence about the assault that occurred in August 2000. I accept that there was an earlier assault by Lance on Mr Hall in Dargaville. I take into account the difficult circumstances Lance faced in his early adolescence as a result of his mother's death and his father's decision to send him to Whakapakari Camp where Lance was treated brutally. Lance's violence towards his father is inexcusable, but it is not inexplicable. Lance had a genuine belief his father had sexually assaulted one of Lance's sisters. Lance was exposed at the age of 14 to an environment on Great Barrier Island where violence was normalised. He lacked the guidance that Mrs Hall had provided to his brothers and sisters during his formative years.

[111] Mr Hall was careful to ensure that Lance's children were provided for through the gift of $25,000 to each of Hinemoa and Te Rangimarie. Mr Hall's reasons for excluding Lance were rational.

[112] Despite that Lance clearly has a need for both maintenance and support. The need for support arises in part from his prolonged estrangement from his father. Lance is in part to blame for that estrangement but the circumstances of Lance's early adolescence, his life following the death of his mother, created an enhanced moral duty. I find that Mr Hall as a wise and just testator ought not to have excluded Lance altogether. The assaults were not "*disentitling conduct*" justifying a complete "*disinheritance*" given all the relevant circumstances.

Breach of Moral Duty

[113] Mr Hall gave no explanation for his decision to favour his five daughters over his three sons by leaving the residue of his Estate to Diana, Tania, Alayne, Leanne and Margaret. Raymond received $50,000 – a gift which was equivalent to the gift that Mr Hall left to Lance's children. There is no indication that Mr Hall thought there was any disentitling conduct on the part of Raymond or indeed Daniel. I note Alayne's belief that Daniel, Raymond and Lance received assistance from their father during his lifetime. That is denied by Raymond and Lance and I find there is insufficient evidence to establish that any significant financial assistance was given to them during Mr Hall's lifetime. On the other hand, the shares in Katui Corporation were

transferred by way of gift to Alayne, Diana, Tania, Leanne and Margaret and as a result they have received its assets including the Neta Grove property.

[114] There is no explanation for this substantially unequal treatment. I accept that the wishes of Mr Hall as testator are not to be interfered with without good reason. I accept that in Family Protection Act claims equality is not equity; the weight of authority is against any application of a principle of equality.[40] However, a wise and just testator who was in the position Mr Hall was in, having recently made significant gifts to his five daughters would not have left his sons so little.

[115] It seems to be common ground that Mr Hall's values did not align with those of his late wife when it came to Te Ao Māori and the application of tikanga. However, Mr Hall's decision to buy the land at Aranga, close to Mrs Hall's urupa at Kaihau and her tūrangawaewae Tama te Uaua indicates respect, love and concern for her culture and (I infer) a desire to all of the whānau a real chance to maintain that connection. If the kaupapa of mana ōrite was accepted by the late Mrs Hall (as it was by most of her children) I have no evidence that it formed part of Mr Hall's values. I also have no evidence which would help me assess the proportion of Mr Hall's assets that were derived because of the mahi of Mrs Hall. She may well have wanted her children to receive an equal share of her assets after her death, but it appears that she left her Estate to her husband.

[116] Of Lance's seven siblings, four of them – Daniel, Margaret, Raymond and Leanne – considered that he should receive an equal share of his father's Estate, indeed that his father ought to have shared his Estate equally between all children. Diana wished in general to uphold her father's Will but wished to gift Lance $15,000 from the sale of Beatrix Street, indicating that she considered to some extent her father had breached his moral duty to Lance. Tania and Alayne considered that their father's Will should be upheld, however while Tania acknowledged the effect on Lance at the age of 13 of the trauma of losing his mother, she felt her father thought long and hard about the best thing to do. Alayne was the only sibling who was firmly opposed to additional provision being made for Lance, expressing concern that Lance had exhausted family

[40] Patterson Law of Family Protection and Testamentary Promises, 5th ed, at para 4.19 citing *Re Dobson* [1991] NZFLR 403.

supports and that her father's concerns were warranted. The implication from Tania and Alayne's evidence is they would have considered it appropriate for their father's Estate to be shared equally but for their concerns about Lance's conduct.

[117] That is not in any way determinative of the issue of the moral duty that Mr Hall owed his family. However, it does indicate that within the Hall whanau the concept of equality – mana ōrite – is current. There seems to be some consensus that their mother would have wanted all her children to be treated equally.

[118] No evidence was led as to the tikanga applicable here. I had Raymond's articulate and persuasive submissions but ultimately, I am unable to conclude without admissible evidence that mana ōrite should be applied in all the facts of this case. There may well have been other relevant tikanga that were relevant to my decision in this case but I did not have the benefit of any evidence, let alone any expert independent evidence about the kaupapa which could or should be considered.[41]

[119] It may well be appropriate for that tikanga to be taken into account when assessing the extent of the testator's moral duty in the context of a Māori whanau where there was either admissible evidence or a precedent establishing the relevance and scope of the tikanga.[42] Even in circumstances where the testator is Pākehā and somewhat dissociated from Te Ao Māori – as Mr Hall was – there may be a moral duty to act in accordance with relevant tikanga. But that is not a finding that I can make in this case in the absence of either admissible evidence or an earlier Court decision establishing the extent and application of tikanga in this context.

[120] The case law generally directs me to inquire as to whether there has been a breach of moral duty "… *judged by the standards of a wise and just testator or testatrix; and if so what is appropriate to remedy that breach. Only to that extent is the Will to be disturbed*."[43]

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[41] For example, what if any tikanga might be relevant to Lance's assault of his father, potentially an act which damaged Mr Hall's mana?

[42] I was unable to locate any relevant precedent cases that specifically affirmed the principle of mana ōrite in the Family Protection Act or analogous context.

[43] *Little v Angus*, above n 16 at 127.

[121] In making my decision in relation to Lance and indeed Raymond, I will apply the approach adopted in *Williams v Aucutt*:[44]

> "A child's path through life is supported not simply by financial provision to meet economic needs and contingencies but also by recognition of belonging to the family and of having been an important part of the overall life of the deceased."

[122] It is not for this Court to be generous with Mr Hall's property "… *beyond ordering such provision as is sufficient to repair the breach*."[45] I note the Court of Appeals observation in *Williams v Aucutt* that in a true "support" or "recognition" case it would be unusual for the claimant to receive more than 10 percent of the estate.

[123] In this case however an equal share of the residue between the 8 children would have been a 12.5 percent share. I find that Mr Hall as a wise and just testator in all the circumstances of this case ought to have provided for all his children equally. I acknowledge the consensus within the whanau that their mother would have wanted them to be equally supported. I acknowledge the sense of loss they hold for themselves and for their youngest brother Lance as a result of the loss of the strong connection to the taonga of their involvement in te ao Maori and their mother's tūrangawaewae, Tama te Uaua following her death.

[124] I will also acknowledge the gift Mr Hall left for Lance's children as part of the provision for Lance.

[125] Raymond did not provide any information about his current financial circumstances. I am therefore unable to find on balance of probabilities that he has a present need for additional maintenance. It is however, appropriate for me to make additional provision for him from his father's Estate to recognise his father's obligation to support him in the sense of providing proper recognition for the filial obligation between them.

[126] I am satisfied that Lance has a need for maintenance as well as support. However, I cannot entirely ignore the concerns that his father raised. While Lance's

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[44] *Williams v Aucutt* [2000] 2 NZLR 479 at [52].
[45] *Vincent v Lewis* [2006] NZFLR 812 at [81].

conduct towards his father may not have been "*disentitling*" would not have been objectively unreasonable for Mr Hall as a wise and just testator to make a reduced provision for Lance in all the circumstances. For that reason, I consider it is just that Lance and Raymond should receive the same provision despite Lance arguably having a demonstrably greater need for maintenance.

[127] I issued a Minute seeking information about Daniel's testamentary provisions and whether or not he was survived by any dependents. There was no response from the lawyer identified as his probable executor. The evidence that I have is that Daniel's wife predeceased him, and that he died leaving no children. While he may have had a need for maintenance and support at the date of Mr Hall's last Will and at the date of Mr Hall's death, I do not think it is appropriate to make further provision for Daniel when I have no information as to who will be the ultimate beneficiary of any award that I make. If he has died intestate, then his estate will be distributed to his siblings.[46]

[128] Because I am making no additional provision for Daniel I can recognise Mr Hall's evident wish to favour his daughters in his will and yet restore Lance and Raymond to the position they would have been in had their father treated all 8 of his children equally.

Remedies

[129] I find that an award of 12.5 percent of the net residue of Mr Hall's Estate, which is equivalent to an equal share between all eight tamariki, will be sufficient to compensate Raymond and Lance for their father's failure to support them. That will be an approximate award of between $97,000 and $127,000 depending on expenses and liabilities including the costs of sale of Beatrix Street (assuming the Executors decide it should be sold to pay the beneficiaries). An award of 12.5 percent to each of Mr Hall's surviving sons will still reflect Mr Hall's wish that his daughters receive a greater share of his estate than his sons. As an example, if the net assets of the estate after all expenses are paid are $1 million then, after the gift to Daniel's estate, Lance

[46] Section 77 Administration Act 1969.

and Raymond would receive approximately $115,625 each.[47] Tania, Alayne, Diana, Leanne and Margaret will each receive $138,750.[48]

[130] Lance has conceded that the gift to Hinemoa and Te Rangimarie should not be disturbed. To compensate Lance for his father's failure to provide him with adequate support I order that the Executors are to pay Lance the balance of a 12.5 percent share of the net residue of the Estate after the $75,000 payable to Daniel and the $500 gift to Hospice is deducted, but they are first to pay the $50,000 payable to Hinemoa and Te Rangimarie from "*Lance's share*".

[131] Raymond is to receive 12.5 percent of the net residue of the Estate.

[132] I reserve the question of costs, but I have a preliminary view that in this case it would be appropriate for Lance's costs to be met from the assets of the Estate. Submissions on costs are to be filed by 11 May 2023. They are to be limited to five pages plus any relevant attachments. The file is then to be referred to me in Chambers for a costs decision to be issued.

[133] I give leave to the parties and executors to apply for any further directions if there are any unresolved issues as to the assets of the Estate. That leave is to be exercised within six months of the date of this judgment, after which the file may be closed.

[134] I extend the brief to lawyer to assist, Ms Walker, and ask her to prepare a draft order for sealing, to consult with the parties, and to refer it to me in chambers if there is any material dispute, or any clarification needed. The draft order is to be filed by 18 May 2023.

Signed at Auckland this 24th day of April 2023 at 2.00 pm

Kevin Muir
Family Court Judge

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[47] $1,000,000 – $75,000 = $925,000 x .125 = $115,625.
[48] $925,000 – $231,250 = $693,750. $693, 750/5 = $138,750.