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**IN THE FAMILY COURT
AT AUCKLAND**

**I TE KŌTI WHĀNAU
KI TĀMAKI MAKĀURAU**

**FAM-2018-090-000754
[2023] NZFC 7376**

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 Nalley for the Applicant
Respondents in Person
N Walker Counsel to Assist

Judgment: 12 July 2023

COSTS JUDGMENT OF JUDGE KEVIN MUIR

[1] Lance Hall was successful as applicant in his claim under the Family Protection Act to further provision from the Estate of his father. In my decision of 24 April 2023, I reserved leave for Lance to apply for costs, expressing the preliminary view that it would be appropriate for Lance’s costs to be met from the Estate. I directed that submissions limited to five pages were to be filed by 11 May 2023. On 1 June 2023 Lance’s lawyer Mr Nally, filed an application for costs.

[2] Lance is seeking full or indemnity costs in the total of \$31,266.40 to be paid from the assets of the deceased Estate. He asks that the sum awarded be paid on or before 30 July 2023. Mr Nally’s bill of costs indicates that a total of 90 hours of time (904 units of six minutes each) were claimed at \$30 per unit – an hourly rate of \$300 per hour plus GST. The hourly rate is reasonable.

[3] In contrast, costs under the District Court scale 2B would have been \$17,190 at \$1,910 per day as set out before.

Item No:	Proceeding		Days
1	Statement of Claim	04/12/18	1.5
8.1	Judicial Conference (Preparation)	X5	1.25
8.2	Judicial Conference (Attendance)	08/05/19, 17/07/19, 10/10/19, 29/03/20, 18/03/21	1.25
9.7	Inspection of Documents	X1	1.0
9.12	Preparing Written Submissions	06/07/22	1.0
17.2	Preparation	11/10/22	2.0
18.1	Full hearing	14/08/22	1.0
	Total		9.0
		Costs (\$1,910/day)	17,190

[4] Under r 207 of the Family Court Rules (FCR) costs are in the discretion of the Court, but in exercising that discretion the Court may apply any or all of District Court Rules (DCR) 14.2 to 14.12.

[5] A guiding principle in the award of costs is that the party who succeeds might generally expect to obtain a contribution to their costs from the party who fails.¹ However, the approach to costs in New Zealand is generally not to award full or indemnity costs. The principles set out in r 14.2 to 14.12 of the DCR and the time allocations and hourly rate set out in Schedule 4 to the DCR reflect a philosophy that parties who are successful should recover a contribution to their costs rather than their entire costs. Part of the rationale for that approach is to better encourage pre-hearing resolution through reasonable compromise, even for parties who think they might have a strong case.

[6] Increased or indemnity costs are generally only available if:

- (a) The nature of a step in the proceeding requires substantially greater time to be spent by the party claiming costs than is allocated under Band C of Schedule 4 – which is the highest time allocation reserved for the most complex matters heard in this Court;² or
- (b) The party opposing costs has contributed unnecessarily to the time and expense of the proceeding.³

[7] In assessing costs in addition to determining which party has succeeded, the following principles should be applied:

¹ Rule 14.2(1)(a) District Court Rules 2014.

² Rule 14.6(3)(a) DCR.

³ Rule 14.6(3)(b) DCR.

- (a) An award of costs should reflect the complexity and significance of the proceeding.⁴
- (b) Costs should be assessed by applying the appropriate value recovery rate to the time considered reasonable for each step.⁵
- (c) An appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding.⁶
- (d) The appropriate daily recovery rate and the reasonable time involved should not depend on the skill or experience of the solicitor involved or spent or the costs actually incurred.⁷
- (e) An award of costs should not exceed costs incurred by the party claiming costs.⁸
- (f) As far as possible the determination of costs should be predictable and expeditious.⁹

[8] The historic practice where the costs of all parties were often paid out of the residue of the Estate of the deceased in Family Protection Act claims has long passed.¹⁰

[9] In *R v R*¹¹ Judge Callinicos succinctly set out the factors that might be relevant as including:

- (a) The outcome of the proceedings.

⁴ Rule 14.2(1)(b) DCR.

⁵ Rule 14.2(1)(c) DCR.

⁶ Rule 14.2(1)(e) DCR.

⁷ Rule 14.2(1)(e) DCR.

⁸ Rule 14.2(1)(f) DCR.

⁹ Rule 14.2(1)(g) DCR.

¹⁰ In *Re Blakey (dec'd)* [1957] NZLR 875 (SC) at 878, North J noted that it should not be assumed that unsuccessful parties who claim costs in Family Protection Act cases would be awarded costs.

¹¹ *R v R* [costs].

- (b) The matters in issue.
- (c) The way the parties (and their legal advisers) have conducted the proceedings.
- (d) Whether the proceedings were made unnecessarily complex and protracted because of stalling tactics or procedural ploys adopted by a party.
- (e) The means of the parties.
- (f) The actual costs incurred by the parties.
- (g) The overall interests of justice.

[10] In analysing the outcome of the proceeding, the size of the Estate and the amount of additional provision that is received by the successful claimant are both highly relevant factors. In considering those factors:

- (a) A small estate should not be substantially reduced in value to the detriment of beneficiaries other than the claimant because costs sought by the claimant are out of proportion to the size of the estate and the award the claimant received.
- (b) Conversely a claimant who is successful should not have the benefits of the award they received substantially reduced because of necessary and reasonable legal costs incurred in obtaining appropriate provision from the estate.
- (c) However, in a large estate, an award of costs approaching full or indemnity costs might well be appropriate, particularly if the award is unlikely to cause hardship to any other beneficiary.

[11] The Estate of the late Raymond Hall is valued at somewhere between \$977,000 approximately, assuming a value of \$900,000 for the Beatrix Street property owned by the deceased and \$1,277,000 approximately assuming a value of \$1,240,000 for Beatrix Street. It is a modest estate by today's standards, it is not a small estate but certainly not a substantial one. There are eight adult beneficiaries including the claimant and his deceased brother Daniel.

[12] On the assumption that the net assets of the Estate are \$1 million, Lance will receive approximately \$115,000. From that \$50,000 is to be paid to his daughters with \$25,000 to each of Hinemoa and Te Rangimarie. He will be left with \$65,000. If I was to award costs on a 2B scale, then after payment of the costs claimed by his lawyer Mr Nally, Lance would be left with approximately \$50,000.

[13] None of the other parties were represented.

[14] Some difficulties were encountered in obtaining accurate information as to the assets and liabilities of the Estate. However, that is not the result of deliberate obstruction or conscious breach of duty by the executors who were three of Lance's sisters – Alayne, Tania and Nelly. It appears to me that they were inadequately advised. It does not appear that they had significant resources to engage competent legal counsel to assist them. They had no particular experience or expertise in estate administration themselves. They provided reasonable assistance to the Court once they understood the information that was required.

[15] Lance's siblings, including some of the executors, supported his request for additional provision. I do not think it is reasonable that the beneficiaries as a whole should have the provision that their father intended them to have significantly reduced. On the other hand, the net compensation Lance receives should be meaningful. I find that he conducted his claim reasonably and he achieved significant success.

[16] Ultimately it is reasonable that a point of compromise be found. I direct that Lance is to be paid the sum of \$24,000 as an award of costs and the disbursements sought of \$628.40 from his father's Estate as costs.

[17] I decline Mr Nally's request to order that those costs be paid by a particular date. The late Mr Hall's Estate consists largely of the real estate at Beatrix Avenue. Mr Hall's executors have a duty to pay the award of costs and the provision awarded to Lance as soon as they practicably can. In any event, unless otherwise specified money due under a judgment, including an award of costs, is generally payable immediately.¹²

Signed at Auckland this 12th day of July 2023 at 12.10 pm

Kevin Muir
Family Court Judge

¹² District Court Rule 118.