

**IN THE DISTRICT COURT
AT QUEENSTOWN**

**I TE KŌTI-Ā-ROHE
KI TĀHUNA**

**CIV-2022-059-000038
[2023] NZDC 12213**

NEW ZEALAND POLICE
Applicant

v

**CARA ANGELINA MATTHEISS
CATHERINE MARIE VERDUYN
TIMOTHY DEAN RYAN**
Respondent(s)

Hearing: On the papers

Appearances: S McKenzie for the Applicant
T Clee for the Respondent Mattheiss
Respondent Verduyn appears in Person
Respondent Ryan appears in Person

Judgment: 29 June 2023

JUDGMENT OF JUDGE R E NEAVE

Introduction

[1] This matter is an application under s 40 of the Policing Act 2008 whereby the police seek directions for the determination of title to certain items of property.

[2] The property in question initially belonged to a Mr Lewis Verduyn. Police were called to his address in August 2019 to investigate his sudden death and items

were seized in the course of that pursuant to s 17 of the Coroners Act 2006. At that point there was no immediate next of kin apparent available to secure any exhibits.

[3] The items seized were:

- (a) \$650 located in a black wallet.
- (b) Black wallet containing miscellaneous cards.
- (c) 2019 diary.
- (d) Miscellaneous documents and paperwork.
- (e) Apple computer.
- (f) Memory sticks.
- (g) Hard drive.
- (h) Backpack containing a camera and phone charger, among other items.
- (i) Samsung cell phone.
- (j) Black wallet containing \$214.40.
- (k) House key.
- (l) Safe.
- (m) Computer.

[4] Mr Verduyn died intestate and although there was a Will, it was not valid and no letters of administration have ever been sought.

[5] Various claims were then made in respect of the property requiring the police to make an application to the Court to determine who should receive it.

Claims

[6] The first claim comes from the first respondent, Ms Cara Mattheiss. She argues that she was the de facto partner of Mr Verduyn and thus entitled to the property under the Administration Act 1969.

[7] The second claim was made on behalf of Mrs Catherine Verduyn, the deceased's elderly mother. That claim was in fact was made on her behalf by her brother who was acting as her attorney. Mrs Verduyn has since died. The third claim came from a Mr Ryan who says that he is a friend of the deceased. He said he had received instructions from the deceased as to what should happen to the deceased's property. However, no formal instructions, appointment as Executor or a properly executed Will has been discovered. It is clear Mr Ryan is unhappy at the prospect of Ms Mattheiss receiving the property.

Legislative background

[8] Section 40 of the Policing Act states:

40 District Court Judge may determine title to certain property

- (1) This section applies to property if—
 - (a) it is in the possession of a Police employee; and
 - (b) it is not property distrained under the warrant of a judicial officer; and
 - (c) there is doubt whether a person claiming it, or which of 2 or more persons claiming it, is entitled to its possession.
- (2) If this section applies to property, a District Court Judge, on the application of any Police employee, or of a claimant to it,—
 - (a) may make an order for its delivery to any person appearing to the District Court Judge to be its owner, or entitled to its possession; or
 - (b) if the owner or person entitled to possession cannot be found, may make any order with respect to its possession the Judge thinks fit.
- (3) An application under this section must be made by originating application to the District Court in its civil jurisdiction.
- (4) If, after the making of an order under subsection (2) in relation to any property, an action is commenced against a Police employee or the Crown for the recovery of the property or its value, evidence of the order, and the delivery of the property in accordance with the order,—
 - (a) may be given and must be received by the court concerned; and
 - (b) if given, is a complete defence to the action.
- (5) However, no such order or delivery affects the right of any persons entitled by law to possession of the property to recover the property.

[9] Doogue J noted in *Stevens v Menzies* and commenting on the equivalent provision in the Police Act 1958:¹

The section enables the police in cases such as the present to make an application to a District Court Judge acting in the civil jurisdiction to determine ownership of property distrained where ownership is in doubt. Such an application protects the police or the Crown from any subsequent claim there might be by a claimant to the property in dispute.

[10] In making this determination Ms McKenzie, for the police, submits that there is authority which suggests that the Court may look to other legislation in determining title. This seems to me to be a sensible consideration.

[11] On that basis it is appropriate to look to the provisions of the Administration Act. Given the property was unquestionably Mr Verduyn's at the time of his death and as there were no relationship property proceedings on foot at the time of his death or any relationship property agreement in force, the Administration Act would appear to govern disposal of his estate.

[12] No doubt because of the value of the property, no party has taken any steps in relation to the administration of the estate and all claimants appear content to leave this court to resolve the issue. This means that for Ms Mattheiss purposes, she is electing to take her interest under the provision of the Administration Act rather than under the Property Relationships Act 1976.²

[13] In December 2022 Judge Gilbert directed that the matter be set down for hearing but gave any of the parties who wished to do so, the opportunity to apply to the High Court for the right to administer the estate and appropriate directions.

[14] No application has been made and it is indicated the parties are now content for me to deal with this matter on the papers.

[15] In essence, the only person who can realistically claim the property is Ms Mattheiss.

¹ *Stevens v Menzies* High Court Dunedin AP 33/93 21 June 1993, pages 1-2.

² See s 61 Property Relationships Act 1976.

Evidence of the parties

[16] Ms Mattheiss filed an affidavit only some of which was relevant. I have to say a good deal of the information filed by her during the course of this proceeding has been distinctly unhelpful and has clouded the issues. It perhaps also explains the approach that Mr Ryan initially took to the proceeding.

[17] That being said, there was nothing filed in opposition to the important aspects of her claim.

[18] Ms Mattheiss states that she was in a de-facto relationship with the deceased at the time of his death, albeit a long distance one. However, she says that the relationship was subsisting at the time of Mr Verduyn's death.

[19] On behalf of Mrs Verduyn, her brother indicated that he took no issue with Ms Mattheiss' claims and made no claims on behalf of Mrs Verduyn's estate.

[20] The third respondent now essentially takes the same view. He too has decided not to make an application for letters of administration in relation to the estate. I also consider that he has accepted that Ms Mattheiss was in a qualifying de facto relationship. While he raises what might be classed as moral objections, there is no legal reason why Ms Mattheiss should not receive the property.

[21] It therefore follows that if Ms Mattheiss raises a legal entitlement to the property, she should receive it.

[22] To the extent that she claims the property there is no evidence to rebut her claim. Further, given what seems to be an accepted history of the relationship, I have no reason to reject the claim as fanciful or lacking in foundation.

[23] To the extent that she was in a de facto relationship with Mr Verduyn, the position is covered by the Administration Act 1969 ("the Act").

[24] Where a person who dies after the commencement of the Act, does so intestate the estate is to be distributed in accordance with the provisions of part 3 of the Act.

[25] To the extent that any items are defined as personal chattels, where someone dies leaving a de facto partner and a parent but no issue, the de facto partner takes personal chattels absolutely. Any residue is then to be distributed two thirds to the de facto partner and one third for the parent.

[26] There are issues as to the extent to which the property in question could be regarded as personal property and personal chattels as opposed to forming part of the residue. However, as no claim is made on behalf of Mrs Verduyn, who is the only other person entitled under the legislation, it seems to me that Ms Mattheiss is now entitled either on the basis the items are personal chattels, or as the only person claiming the residue. Indeed as at today's date, there appears to be no-one else qualifying under the legislation or claiming any potential interest through Mrs Verduyn in relation to her share of the statutory trusts created.

Conclusion

[27] Therefore in the absence of any other valid claims, in the absence of any contradictory evidence, that Ms Mattheiss was at the relevant time, the defendant's de facto partner, it seems to me she is the only one entitled to receive possession of the items forming part of Mr Verduyn's estate. Accordingly, I direct that the items held by Police be returned to Ms Mattheiss and I leave it to her to make such arrangements as she sees fit with the New Zealand Police as to recovery of the items.

[28] If Ms Mattheiss has not arranged to receive the property within three months of receipt of the date of this decision, the police may apply for further directions if required.

[29] As no party has sought orders to costs then costs lie where they fall.

R E Neave
District Court Judge

Signed at Christchurch on the day of 2023 at am / pm