BROWNE·Linkenbagh
LEGAL SERVICES

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Intestacy:
Issues of delay and domicile

Jan's Yarn:

Jan Szczudlik died on 16 January 1992. Twenty three years later, on 15 October 2015, the Supreme Court made orders enabling the administrator to distribute his estate. Why did it take so long? I don't know all the answers to that question but I know one of them: Jan died without a will. Although he was domiciled in NSW at his death, he had been born in Poland. He had also lived in Germany, Italy and Victoria. The administrator, NSW Trustee and Guardian, had to enquire into whether Jan had ever married or had children. That meant enquiries in each of those jurisdictions. Once it was satisfied that that probably hadn't happened, it had to establish the death of Jan's parents. It had to establish whether he had siblings, whether they were living and, for those who had died before Jan, whether the siblings had children.

The relief for Meleigh:

Akos Meleigh migrated to Australia from Hungary in 2002. He died in 2013 without a will. The court had to decide the law that determined the inheritance of his estate; essentially: was it Hungarian or NSW law? This depended on an Akos' domicile. The court considered Akos' circumstances before his death and decided that he was domiciled in NSW. This meant that his moveable estate was administered in intestacy according to the law of NSW. However, according to this law, the beneficiaries to that estate were resident in Hungary. As the Court always prefers the appointment of a person within the jurisdiction who is accountable to the court as administrator, the court made a grant in favour of the beneficiaries' NSW attorney.

Conclusion:

In both estates the amount of work, delay and legal costs would have been very much less if the person had died with a valid will.

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Fay's Story

A good reason for a person of any age to make a valid advance care directive

"Fay" was the name given by the Court to the unfortunate woman who found herself the subject of court proceedings concerning the termination of her pregnancy. She was 19 years old, intellectually disabled and 22 weeks pregnant. She was admitted to ICU and placed on dialysis due to renal impairment. Her condition was deteriorating. The treating doctors considered that Fay had a significant risk of stroke and possible death. They recommended termination of the pregnancy as this would allow more effective control of Fay's blood pressure.

Fay refused the advice and signed an Advance Care Directive allowing medical intervention in only limited circumstances. Her treaters felt that immediate intervention was needed. They sought permission from NCAT and then, on appeal, the Supreme Court. The Supreme Court was satisfied that Fay did not have adequate understanding to make a decision refusing the recommended treatment. This meant that the advance care directive was invalid.

The question was then whether the Court would allow the recommended abortion. It agreed to do so to preserve Fay's life. This was the conventional application of the fundamental legal principle that the State preserves its citizen's life unless the individual decides otherwise.

The moral is to make an Advance Care Directive whilst you have the mental capacity to understand what you're doing and before others can convincingly assert that you lack that capacity.