

W412-8-1178
IN THE HIGH COURT OF AUSTRALIA

RIDGWAY

V.

LEE AND OTHERS

REASONS FOR JUDGMENT

Judgment delivered at **MELBOURNE**

on **Tuesday, 15th June 1948.**

ORDER.

Appeal allowed. Questions answered as follows:-

1(1) By ascertaining the income in fact derived by the widow from her own property, but excluding the house known as No. 17 Mount Street, Perth, together with the furniture therein.

1(ii) (a) Yes.

1(ii) (b) Yes.

1(iii) Not answered.

Costs of all parties in this Court and in the Supreme Court to be paid out of the estate as between solicitor and client.

RIDGWAY v. LEE & ORS.

JUDGMENT

LATHAM C.J.
RICH J.
STARKE J.
DIXON J.
WILLIAMS J.

2/10/12
12/1

REASONS FOR JUDGMENT

LATHAM C.J.

This appeal raises a question of the interpretation of the will of the late George Ridgway. In his will he provided for a gift to his wife of "an annuity of such an amount as will, together with the income derived from her own separate estate (but excluding the house known as No. 17 Mount Street, Perth, together with the furniture therein) give her an income of two thousand five hundred pounds (£2,500) per annum". That provision is followed by a clause authorising the trustees to provide for the payment of the annuity by setting apart and appropriating in respect of such annuity such part or parts of the residuary estate as the trustees should in their opinion think sufficient to pay such annuity. The will further directs that the capital of the annuity fund may be resorted to at any time if the income of that fund is insufficient to pay the annuity. There is a gift of the residue of the estate to various beneficiaries.

At the time of his death the widow of the testator owned certain investments which, in the year following the testator's death, brought in an income of £2,341. The widow has disposed of or re-invested a certain number of those investments, and in the period from August 1946 to June 1947 her income from her property was only £236. She claims that, on the true construction of the clause, she is entitled to be paid from the estate the difference in any year between her actual income/and the amount of £2,500.

It is contended for the residuary legatees, on the other hand, that there is an implied condition that the widow shall reasonably invest her property so as to obtain therefrom the income which a prudent and reasonable person desiring to obtain a maximum but safe income would obtain.

The questions asked in the originating summons were as

follows:-

"(1) How is the income of the Testator's Widow (the above-named Defendant) from her own separate Estate to be assessed or determined each year during her lifetime.

(11) Is the Testator's Widow entitled to have her annual income made up to £2,500 out of the Testator's estate in spite of the fact that she is retaining part of her own separate estate

(a) uninvested

(b) invested at a rate of interest less than that obtainable from Commonwealth Treasury Bonds or from any other specified class of investments and if so what class."

Those questions were answered by a declaration that clause 4 of the will is to be construed as implying a condition precedent to the operation of the bequest to the widow that she should continue as far as may reasonably be possible the investment of her separate estate, with the exception mentioned, so as to derive therefrom annually an amount of income equal or as nearly as possible according to the circumstances equal to the amount of income which she could reasonably be expected to derive from the investments of her separate estate which she held at the time of the death of the testator. A further condition is also declared to be implied to the effect that if the executors upon reasonable grounds are satisfied that the widow has failed to observe the already stated condition precedent the executors shall be entitled to assess the amount of income which she might reasonably be expected to derive and to pay her accordingly.

This decision of the learned judge is supported upon the contention that it produced a reasonable result - that it was unreasonable to suppose that the testator intended that the widow should be at liberty to dispose of her property as she pleased, or to abstain from investing it, so as to produce the result of diminishing her income and therefore increasing her claim upon the estate of the testator at the cost of the residuary legatees.

It is contended on behalf of the residuary legatees that some condition of the character adopted by His Honour should be implied. The leading rule for construction of wills is that the intention of the testator should be ascertained from the words which he has used. If there is ambiguity in the words of the will and on one construction the result is capricious and whimsical and on the other construction the result is regarded as rational and convenient, the second construction will be adopted. But if the words are unambiguous in the context of the will, then effect must be given to the words, even though they may produce a result which may be considered by individuals to be capricious or unjust or unreasonable. The question, therefore, is whether the words are clear according to their natural construction in their context, or whether an implication is required in accordance with the principles to which I have referred.

In my opinion the words are clear. There is a gift to the widow of an annuity of such an amount as will, together with the income derived from her own separate estate, with a certain exception, give her an income of £2,500 per annum. The object is to give her during her life an income of £2,500 per annum. I notice, for the purpose of rejecting the argument, that it is contended that the words "income derived" should be interpreted as meaning "income derived at the time of the death of the testator". If the words were so interpreted, the result of giving her an income for the rest of her life of £2,500 per annum would quite probably not be secured. It is said that the intention of the testator was that the widow should not reduce her income and so increase her claim on the estate of the testator. It appears to me that the testator has not made any provision for or against such action by the widow. He has trusted her to behave in what she regards as a reasonable manner, and I can find no indication in the will that her action in investing her property is to be controlled directly or indirectly by the

trustees. I am therefore of opinion that the appeal should be allowed and that the answer to the first question should be in the words of the will - as to which it must be recognised that further questions may arise.

Question 1(i) should be answered, in my opinion, in the following manner -

"By ascertaining the income in fact derived by the widow from her own property, but excluding the house known as No. 17 Mount Street, Perth, together with the furniture therein."

Question 1(ii)(a) should be answered - Yes; Question 1(ii)(b) - Yes. Question 1(iii), which the learned judge has not answered on account of deficiency of material, should not be answered by this Court.

REASONS FOR JUDGMENT.

RICH J.

The testator showed an anxiety to provide this annuity for his widow because he authorised the trustees to provide for the payment of it by setting apart such part of the residuary estate as should be sufficient to pay the annuity, and that the capital of the annuity fund should be resorted to in case at any time the income was insufficient to pay the annuity, and that on the cesser of the annuity the annuity fund should revert to and form part of the residuary estate and that surplus income arising from the annuity fund should be retained and used by the trustees to make up any deficiency in future years. These words appear to show that the testator understood that the income would vary from year to year. Then he authorised the trustees to sell the residuary estate, and if they thought fit, with the proceeds of the sale to provide the annuity fund already mentioned or, instead of making such a sale, in order to provide the annuity he authorised the trustees to appropriate any of his investments existing at the time of his death to provide for the payment of the annuity to his wife.

From the words of the will I am unable to find any limitation on the calculation of the amount to be paid to the widow or any obligation that she should act prudently in relation to her separate estate so that she could obtain a reasonable income from the estate. That being the case, I would answer the questions in the manner suggested by the Chief Justice. I also agree with the order as to costs.

HIDGWAY v. LEE & ORS.

REASONS FOR JUDGMENT

STARKE J.

I agree that the appeal should be allowed and
the questions answered as proposed.

RIDGWAY v. LEE & ORS.

JUDGMENT.

DIXON J.

I too have been unable to find any sound reason for interpreting the gift in question as anything but a direction by the testator that his widow's income from time to time should be made up to the named amount whatever the income might be, leaving her entirely unfettered in dealing with her own property. Nor have I been able to discover in the situation thus created grounds giving rise to any equity in the residuary legatees by which her action might be controlled or by which the consequent diminution of the amount of her income might be taken into account by substituting some notional amount of income for the actual amount in calculating the sum payable to her to make up the annuity. I therefore concur in the view that the appeal should be allowed.

RIDGWAY v. LEE & ORS.

JUDGMENT

WILLIAMS J.

I also agree that the appeal should be allowed, and I agree with the order proposed by the Chief Justice. I am quite unable to spell out of the words of the will any direction similar to that discussed in Re Williams 54 L.T. 105, in the nature of an implied contract that as a condition of enjoying the annuity the wife should deal with her separate estate in any particular manner.