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Suicide notes as wills on FISA agenda

The Fiduciary Institute of South Africa (FISA) held its second annual conference in Cape Town in early September. Topics covered included offshore estate planning, s 2(3) of the Wills Act 7 of 1953 and maintenance claims by grandchildren.

Speakers at the conference included Tienie Cronje from the Office of the Chief Master, Professor Francois du Toit from the University of the Western Cape, James Faber from the University of the Free State and Professor Mohamed Paleker from the University of Cape Town.

Suicide notes as wills

Professor du Toit and Mr Faber discussed case studies relating to s 2(3) of the Wills Act. These included instances in which suicide notes had been accepted as valid wills. Mr Faber said that in *Smith v Parsons NO and Others* 2010 (4) SA 378 (SCA) the deceased had written a suicide note containing testamentary provisions, which he signed with his first name. He left the note under a crucifix in the kitchen before committing suicide. The only question before the Supreme Court of Appeal was whether the deceased had intended the handwritten suicide note to be an amendment of his will as contemplated by s 2(3).

Mr Faber said that the suicide note gave clear instructions on what should happen to his estate, as evidenced by words such as 'you can have this house'; 'I authorise … to give you …'; 'I leave everything else to…'.

Mr Faber said that, after taking into account the specific facts of the matter, the Master of the High Court was directed to accept the suicide note as an amendment to the deceased's will.

In *Abrahams v Francis NO and Others* (WCC) (unreported case no 5890/2009, 10-11-2010) (Bozalek J) the deceased died of natural causes, but prior to his death he was unstable and suffered from depression and abused alcohol, which rendered his on-off relationship abusive. The unstable relationship contributed to anxiety and mental instability, which led to the deceased contemplating suicide. He wrote a letter (handwritten, unsigned and undated) to his family and friends about the contemplated suicide. The letter also contained testamentary provisions. In addition, the deceased made a number of statements that involved promises relating to the dissolution of his estate prior to death.

Mr Faber said that the question to be considered was whether the deceased intended the document to be his will. The court relied on *Van Wetten and Another v Bosch and Others* 2003 (4) All SA 442 (SCA) to determine this, adding that it was not disputed that the document was drafted by the deceased.

The respondents contended that, because of the various statements made by the deceased in the period before his death, he did not intend the document to be his will. In coming to its decision, the court examined the –

- wording of s 2(3);
- the requirements for the application of s 2(3);
- the purpose of s 2(3); and
- similar cases.

Mr Faber said that the court found there were 'very clear indications that the deceased intended [the document] to be his will', including that he had listed his main assets, nominated a beneficiary, appointed an executor and stated: 'I herewith declare that this writing replaces all previous in respect of my estate devide (sic) or last wishes expressed.'

Mr Faber said that the court, after considering the facts of the matter, held that the terms of the contested will that 'unequivocally point towards the deceased's intention that it would constitute his will' carried weight. Further, the court found that the fact the deceased was contemplating suicide did not render the suicide letter 'something less than his will, if that is indeed what it is'. The court also found that the deceased changing his mind about committing suicide did not exclude the document from being declared his will.

Maintenance and grandparents' deceased estates

Professor Paleker and one of his postgraduate students, Daniel Mackintosh, pointed out a discrepancy in South African case law with regard to maintenance claims. The pair said that, on the one hand, while parents and grandparents have a duty to maintain their children and grandchildren, and children also have a claim for maintenance against their deceased parents' estates; no claim by a grandchild against a deceased grandparent's estate had been recognised by the courts. They argued that there is no basis for this distinction, which 'flies in the face of s 28 of the Constitution', which relates to children's rights.

Developments at the Master's Office

Mr Cronje spoke about developments at the Master's Office with regard to legislative development and information technology, which he said would soon make it possible to follow the administration process of deceased estates and trusts online.

In his presentation, Mr Cronje touched on the Master of the High Court's integrated case management system (ICMS) web portal, which connects close to 400 magistrates' offices (deceased estate service points) and all of the Masters' Offices. The ICMS web portal makes information available that has been collected by the Masters' Offices since the year 2000 and information captured at service points and Masters' Offices is updated on a daily basis on the portal.

Mr Cronje said that the Office of the Chief Master would pilot a system of paperless administration of estates at a new Nelspruit office, which would have service points at the Nelspruit and Barberton magistrates' courts. He said that this system would involve better use of technology by enabling –

- uniform procedures in all offices;
- less dependence on paper documents;
- process management; and
- instant reports on turnaround times and problem areas.

Mr Cronje also referred to a Chief Master's Directive that payment by estate representatives in a form other than cheques is acceptable, and mentioned electronic fund transfers in particular.

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