
Around the Nation: Tasmania

Editor: Justice Stephen Estcourt AM

A TALE OF TWO COURTS

On 14 May 2015 Josephine Ramos Cooper was a passenger in a car being driven by her friend Olga Neubert. At approximately 3.30pm they stopped at an intersection in the Hobart suburb of New Town. While they were waiting for the traffic to start moving again a vehicle cut across in front of them and Ms Neubert's estranged husband Klaus Dieter Neubert alighted and walked towards the driver's side door of their car carrying a rifle. He pointed the gun at Ms Neubert through the closed window of her vehicle and shot her in the head.

Ms Cooper reached over and with her right hand tried to stop Ms Neubert's bleeding and tried to protect her from being attacked further. Mr Neubert however pushed the barrel of his gun against Ms Cooper's hand and fired through it into Ms Neubert's head, fatally wounding her.

Ms Neubert and Mr Neubert had been in a relationship from about 1995 until 2014 when it ended in separation. In October 2014 Ms Neubert had commenced property proceedings against her husband in the Federal Circuit Court of Australia. After her death those proceedings were transferred to the Family Court of Australia and were ultimately heard and determined by Benjamin J on 15 August 2017.¹

In the meantime Mr Neubert was charged in the Supreme Court of Tasmania with the murder of his wife and with causing grievous bodily harm to Ms Cooper. On 22 May 2017, then aged 75 years, he was convicted of both crimes. Also in the interim, Ms Cooper had commenced civil proceedings against him in the Supreme Court for damages resulting from the serious injury she sustained to her hand as a result of being shot. By a combination of orders of the Supreme Court and the Family Court Mr Neubert's considerable Australian and overseas assets were frozen.

In passing sentence on 22 May 2017, Brett J commented that he was not satisfied that Mr Neubert's plan to kill his wife was motivated to any significant extent by a desire to avoid financial loss arising from the Family Court proceedings, although his Honour had no doubt that those proceedings contributed to his anger over her actions in bringing their marriage to an end.

Brett J rejected Mr Neubert's assertion to police after his arrest that the purpose of carrying the firearm in his vehicle was to commit suicide in front of the Family Court. His Honour remarked that Mr Neubert had not done that despite having had ample opportunity to do so.

For the murder of his wife, Mr Neubert was sentenced to imprisonment for a term of 25 years, and for the crime of causing grievous bodily harm to Ms Cooper he was sentenced to a term of three years' imprisonment to be served cumulatively upon the sentence imposed for murder. A total non-parole period of 16 and a half years was set.

On 26 May 2017 judgment was delivered in favour of Ms Cooper in her civil proceedings in the sum of \$2,312,284.20.²

Ms Cooper had established that her injuries and their sequelae not only prevented her from working, but also caused her to be unable to care for herself as she once did and to require daily attendant care as a result. In addition, the trial judge accepted her claims that the psychological trauma she suffered prevented her from sleeping and caused severe anxiety and rumination about what had occurred.

After judgment Ms Cooper's legal costs were agreed in the sum of \$213,435.17 creating a total judgment debt in the Supreme Court due by Mr Neubert in a sum exceeding \$2.5 million.

A slight digression is required at this point to highlight a matter that reflects an interesting aspect of interface between the Supreme Court and the Family Court. A sum of \$72,997.73 which was part of the

¹ *Neubert v Neubert (No 2)* [2017] FamCA 829.

² *Cooper v Neubert* [2017] TASSC 33.

frozen assets was used by the husband to pay legal fees in respect of the civil proceeding. These funds were taken and used without the consent of the late Ms Neubert's representative in the Family Court proceedings and or Ms Cooper who was by then an intervenor in those proceedings. The fees were expended by the solicitors to whom they were paid over a period of a few days. The withdrawal and expenditure was authorised by the husband's then attorney. The expenditure was of absolutely no benefit to Mr Neubert as the solicitors withdrew in the absence of further funding and were simultaneously dismissed by Mr Neubert as a result. The attorney, being cited for contempt of the Family Court orders freezing the assets refunded the sum of \$75,000 with the consequence that if there was a debt of \$72,997.73 it was a debt between Mr Neubert's attorney and his then solicitors and was not relevant to the property proceedings in the Family Court.

Of further note, during the hearing of the property proceedings Mr Neubert was self-represented. He blamed the Family Court for his lack of representation in that it did not release further money to pay for his legal fees. Benjamin J observed that this was a false and disingenuous argument by Mr Neubert. His Honour said that it was made clear by the legal personal representative of Ms Neubert and the intervenor in previous court appearances that funds for appropriate legal representation would be made available, provided they were taken from the funds held by Mr Neubert in Europe. It was to be conditional upon those funds being repatriated to Australia. He refused to repatriate those funds, and as a result he was described by his Honour as "the author of his own misfortune".

The hearing before Benjamin J was quite unusual. In his response to the property application, prior to the death of Ms Neubert, Mr Neubert had conceded that a property adjustment order ought to be made on the basis of 80% of the property for him and 20% for his wife. At the hearing he disassociated himself from that response, blaming his then solicitor. He asserted that at all times he had anticipated and sought an equal division of property between himself and his late wife. Consequently, at the hearing he sought an equal division of property between himself and the late Ms Neubert's representative.

On the other hand the representative and the intervenor, Ms Cooper, sought orders that there be a property adjustment between the estate of the late Ms Neubert and her husband on the basis of payment to the late wife of 35% of the net property and payment of the husband's share of the balance of the net property direct to the intervenor, having regard to the judgment debt in the Supreme Court.

This was a most unusual, if not a unique situation with the representative for the late Ms Neubert arguing for a lesser payment to her, and the husband arguing for a lesser payment to him.

As to Mr Neubert's position, Benjamin J was conscious that the more money that was paid to the estate of Ms Neubert, the more money was gifted to the two or three of Mr Neubert's grandchildren under the terms of the late Ms Neubert's will. His Honour found that Mr Neubert's approach was designed to minimise the amount of the judgment debt that would be paid to the intervenor and to increase the amount to be paid to his grandchildren.

Having regard to all of the customary considerations involving contributions and the relevant statutory factors Benjamin J accepted the submissions by counsel for the representative and counsel for the intervenor that the property ought to be adjusted 35% to the late wife and 65% to the husband, with the husband's share to be paid directly to the intervenor and set off against the judgment debt.

Neither the intervenor nor the representative raised any issue of priority as between them and both agreed that once the property had been adjusted the balance due to Mr Neubert should be paid directly to Ms Cooper. It was submitted, and his Honour accepted, that the cost of recovering the funds through the Supreme Court would be time consuming and costly.

Given the circumstances of the unusual case Benjamin J determined that payment to Mr Neubert was to be directed to Ms Cooper in partial satisfaction of the judgment debt. His Honour accepted that there had been examples of the Mr Neubert using moneys contrary to court orders and noted that, given his evidence and despite his convictions in the Supreme Court, he had little or no regard or sympathy for Ms Cooper.

As to "just and equitable" considerations his Honour observed that the approach by the representative and the intervenor operated in a principled way, that the intervenor had refrained from seeking enforcement

of the judgment debt in the Supreme Court pending the outcome of the Family Court proceedings and that Mr Neubert's approach in offering 50% of the property to his wife was not made out of any sense of obligation or generosity to her, but rather to seek to maximise a transfer of assets to his grandchildren through Ms Neubert's will.

The overall effect of the division in the Family Court of approximately \$2,168,153.17 was that Ms Neubert's estate would be paid some \$758,853.61 and Mr Neubert would be entitled to about \$1,409,299.56, all of which would be paid to Ms Cooper in partial satisfaction of the Supreme Court judgment debt.

Mr Neubert's money and investments held in Europe were eventually repatriated to Australia. The Family Court exercised its extra-territorial jurisdiction and powers pursuant to the *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*. This Convention is enacted in Australia as ss 111CA–111CY of the *Family Law Act 1975* (Cth). Those provisions enable orders to be made for the protection of the property of children in contracting states. That process was used to make an order in Australia which was registered and applied in the European country where the property was held.

Mr Neubert, who will be over 90 years old before being eligible for parole, was left with no property of any value, apart from a small European monthly pension which is paid into an Australian bank account the subject of the orders of Benjamin J and as such is in effect garnisheed in favour of Ms Cooper.

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