



## The Thorny Birds

“From the outside, Australian novelist Colleen McCullough's home on Norfolk Island is prim and picket-fence perfect, a long tree-lined driveway leading to a white two-storey colonial house in a leafy garden. Inside, it's a different story...”.<sup>1</sup>

Colleen McCullough (“Col” as we found out she was called) famously wrote *The Thorn Birds*, a huge hit in the 1980s and later made into a television show. Growing up in Ireland, I remember the whole country being shocked at this tale of a woman having a relationship with a priest. We were shocked but we had to watch!

Col moved to Norfolk Island, perhaps for privacy or a quiet life. However, that peace did not follow her passing as recent proceedings in the NSW Supreme Court very publicly analysed aspects of her family and health in a dispute about her estate. The decision in this dispute was recently handed down by the Court<sup>2</sup>.

The famous author would perhaps have been pleased to write such a great story, with her estate dispute finding a broad audience, but would not have relished being the main character.

The parties giving evidence seemed caught up in the drama of a wealthy famous woman. There were reports of her husband Ric being in “a murderous mood” and evidence that Col herself could be “cranky and impatient ... and difficult and demanding...”. There was a suggestion that Ric had caused Col to be bruised but he gave unchallenged evidence that Col had a condition causing discolouration of the skin. Similarly, claims of over-medication were not proven.

The Court admitted that it did not get to the bottom of what exactly happened and that certain things were a mystery. The Judge too seemed inspired by literature and explained his difficult position, “If the track of the truth in this matter is to be found, it is narrow and poorly lit.”

Testamentary documents had been prepared by the deceased's friend Ms Coleman who was a lawyer and also by her husband's lawyer.

The Court was doubtful about much of the evidence that led to a Will being propounded which failed to include a suspicious page that purported to distribute the entire estate to a foundation in Oklahoma. “F@#k Oklahoma”, the late author allegedly shouted at one point! We were invited to believe that this meant she did not want the foundation to be the main beneficiary of her Will. The Foundation issued proceedings.

<sup>1</sup> <http://www.traveller.com.au/write-at-home-a-glimpse-inside-writer-colleen-mcculloughs-house-qx3h3r>

<sup>2</sup> The Estate of Colleen McCullough [2018] NSWSC 1126 (20 July 2018)



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On Ms Coleman's evidence, Col initialled the page of the Oklahoma Will bequeathing her estate to the Foundation, but neither of the two witnesses initialled or signed that page nor the page setting out executor powers.

The lawyer for the deceased's husband of 30 years, wrote to Col's lawyer, "Ric has asked me to draft simple mutual wills for himself and Col, and a simple Deed agreeing to not change those wills."

The deed to which reference is being made was a "Mutual Will deed" which is usually a contract to enter into Wills with certain terms and an agreement not to change such Wills. Lawyers experienced in this area are well aware of the fraught nature of such documents.

As was reported, it was quite the courtroom drama. The Judge set out some fairly extensive segments of the cross-examination of Ms Coleman relating to her discussions with Col and Ric because of their importance to the critical issues in this case and to Ms Coleman's credibility:

Q. Listen, let's leave the mind reading to one side. She has told you, "Give him what he wants." One, two, three, four, five words - all one syllable. Not hard to understand, are they?

— Q. Right. We know you understood that. Just identify, with precision, what Col — said to you that made you think that that is what you had to do. I'm not talking — about reading between the lines, I'm not talking about interpreting documents; — I'm talking about direct instructions where Col says to you, this is what you are — to do?

A. She - she didn't have a voice at that time.

A. That was the only thing she said to me around that time.

Q. You interpreted that to mean deceive him into thinking he's been given what — he wants; is that right?

A. No.

Q. Carry out a plan of deception; is that the way you interpreted it?

A. It wasn't intentional deception.

Q. Accidental was it?

A. I recall saying - no I recall saying to him what we're doing is for your — benefit.

— Q. If you don't answer this question you can take it that the submission I will — be making is that you are refusing to answer it, do you understand that?

A. Well I--

Q. Because I'm putting it to you, this is the third time;

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The Court found that Ms Coleman admitted to a course of conduct that is entirely inconsistent with what is required of a practising solicitor, namely:

- (a) Asking a person (Mr Quintal) to add his initials to a document as a witness when he had not seen the person whose signature he was purporting to witness sign that document; and
- (b) Providing a document purporting to be the will of her client to the husband of her client in order to deceive him into believing that his wife had made a will in his favour.

There was evidence which points to significant involvement of a carer named Ms Wright in the developments at Out Yenna in the last year of Col's life:

- She called the police and told them that Col feared for her safety; and
- She most likely organised a medical certificate from a Dr Metcalfe. Ms Wright was in a relationship with Dr Metcalfe at the time!

The judgment is clear and we think it is helpful to quote directly from it as, while legal issues may be complex, a consideration of people's behaviour is, well, interesting.

The Court said, "In other circumstances, the evidence of a nurse or carer with no benefit to be obtained by either of two (or three) contested wills would be important evidence in assessing where the truth lies. I am, however, not able to accept Ms Wright as a truthful non-partisan witness whose evidence can be accepted without corroboration. Ms Jackson is another carer whose evidence cannot be safely relied on without independent corroboration, although for different reasons". Ms Jackson had given evidence in her affidavits, helpful to Ric's case...but Ms Jackson's loss of recollection was dramatic.

The Judge concluded: "The matters referred to [above] lead me to conclude that, whatever the imperfections in their marriage, the tensions between them over financial matters, Col's concerns over Ric's spending over the years, and Ric's affair, the situation by October 2014, and beyond, had improved from that in June 2014 and was not so acrimonious as to necessarily preclude as a possibility that Col would decide to reinstate Ric, her husband of more than 30 years, as the sole beneficiary of her estate."

"It is not unheard of that a relative or close friend of a married person holds strong views about the spouse's unsuitability and the viability of the marriage which views, even if made known, are not accepted or acted upon by the married person."

"As the passage just cited makes plain, the Court is not called upon to assess whether Col's decision to reinstate her husband as sole beneficiary was a wise one or justified in all the

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circumstances ... but none of the possible reasons I have mentioned are irrational and each would, alone or together, support a return to the position that had pertained from at least 2005 to 2014, namely, that Ric would obtain Col's entire estate."

The Court found that "there was no direct evidence of coercion, physical or non-physical, towards Col or Ms Coleman in relation to the execution of Exhibit 5 and Exhibit 6, and so the question therefore becomes, is there sufficient material presented to support the inference that Col was not acting of her own free will – that is a circumstantial case." The Court found the Will leaving the entire estate to Ric was valid.

The Court had a lot to say about the lawyers: "The need for this litigation has been caused by Ms Coleman and for two reasons. The first is that she failed to prepare a fresh will in the usual fashion and instead decided that she could substitute one dispositive page for another. The second is that she propounded a version of events by which she sought to justify, in effect, her disassembling of the "will" prepared by her and provided to Ric on her client's instructions and the reassembling of the Oklahoma Will. That is conduct which, on my findings, was not consistent with the instructions she had received from Col and her own actions on 24 and 25 October 2014 and in January 2015. It is this second respect, particularly, which has led to the extensive and unfortunate litigation in this matter." Perhaps because of the way the case was run, he ordered that each party should bear his or her own costs.

The foundation lost, Ric won and many reputations were damaged. The drama of a life of ups and downs can get concentrated at the end. It is human nature to want to have a final say. In Ireland, we say "it could happen to a Bishop"!

The Courts take no pleasure in managing such disputes and sometimes the only winners are the lawyers. At Legacy Law, we work with clients to try and avoid going to Court. Sometimes it is inevitable so it best to be familiar with the cases. We do our best to advocate for our clients and will fight for them in Court if necessary so that their wishes are honoured.

Col explained to Ric that movie rights do not necessarily turn into movies. We wonder who is going to make the movie of this story?!

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