



LEGACY LAW

Protecting the assets in your family tree

## Partner or carer? Drastic financial consequences for a family.



As we have mentioned before, carers are wonderful people who do important work, often for little or no reward. Here is another scenario where a carer can be found to be a lover. The case of *Sun v Chapman* decided whether a de facto partner was a carer or partner at the time of the deceased's passing.

Recently decided in the NSW Court of Appeal, the case of *Sun v Chapman* [2022] NSWCA 132, follows an earlier judgment (*Sun v Chapman* [2021] NSWSC 955) that found that Ms Sun was the live-in carer of the deceased, Mr Robin Chapman, and not his de facto partner. The recent decision heard that the couple began living together in 1998, and although an earlier decision found that they had ceased a de facto relationship, the Court of Appeal disagreed. Mr Chapman and Ms Sun lived together from 1998 until Mr Chapman's death on 2 February 2019. Mr Chapman's last will was made in 1996 which pre-dated the relationship and as such made no provision for Ms Sun.

The Court of Appeal reviewed the "evidence of the existence, nature and quality of [the] relationship". Although Ms Sun was caring for the late Mr Chapman and they often fought, this did not negate the fact that they remained in a de facto relationship and there was no evidence brought to the contrary. It is harder to prove something is not the case.

Medical notes and police records demonstrated that the deceased had a dementing condition. These notes also refer to the deceased and Ms Sun in a de facto relationship and not as a carer-patient relationship. Although the Court heard that the

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adult children of the deceased did not see their father and Ms Sun engage in behaviour that indicated a de facto relationship, the Court decided this was not unsurprising that the deceased did not disclose the relationship to his adult children.

Ms Sun, however, demonstrated in a number of ways that she was in a de facto relationship with the deceased by showing photos of holidays together, as well as corroborative evidence from a friend, a neighbour and her son that was consistent with Ms Sun and the deceased being in a relationship together. In addition, the deceased made a statutory declaration on 10 June 2003 to support Ms Sun's application for a permanent residency visa and stated they were in an "ongoing de facto relationship."

Relevant to the case, the Court of Appeal makes note of how the legislation defines "de facto relationship," "close personal relationship," and "eligible persons" who can make an application for a family provision order with regards to the estate of a deceased person.

The Court of Appeal stated that Ms Sun and Mr Chapman were in a de facto partnership rather than a carer-patient relationship even though the romance had ended, in much the same way a "wife might continue to look after a demented and grumpy husband."

Society expects partners to do some caring. Hopefully they do care! But carers who become romantic partners cross a line.

Advice in advance could have achieved a different result! I have personal experience with this. I prepared an agreement for someone in our family to ensure they received a fair hourly rate for offering care services but no more. They were contractually obliged to advise the family if any offer of a legacy or other support was made by the family member who had dementia. It worked.

Imagine how the family of the deceased feel in this case, having embarrassing evidence revealed so publicly? I comfort myself that, while these articles go viral, our audience are discreet and sensitive people. Aren't you?!

Legacy is more than just money, it is how you are remembered. It is worth protecting.

Thank you Veronica Peters, psychologist for her help with this article.

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