

Probate Law

Can a former wife claim on an Estate?

Ryan's Case – Supreme Court, QLD – found no entitlement

By John Fitzpatrick

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- In this case Therese Ryan applied for an order that adequate provision be made for her proper support out of the Estate of Harrison.
- The widow of Harrison challenged the application.
- The Succession Act provides that a former wife of the deceased can apply for support.
- Case for execution – at the time of death the former wife was NOT receiving maintenance. The question was whether she was “entitled to receive maintenance.”
- What does “entitled to receive” mean?
 1. Luck's case – held ‘entitlement’ means an entitlement enforceable either by contract or court order
 2. Krause's case – held an entitlement or rightful claim involves a rightful claim on title to it – an established claim as opposed to an asserted or alleged claim.
- In Ryan's case, at the time of Harrison's death there was no court order which was still operating – the order stated it was a “full and final settlement.”
- Was Ms Ryan a “spouse”?
- Ms Ryan's application was dismissed

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