

# Another Superannuation Contest



**It pays to consider your superannuation when reviewing your wills and estate planning.**

## *Scenario*

Helen was the sole member of a self-managed superannuation fund (SMSF). She and her daughter were the trustees of the fund. After Helen died, the daughter paid the whole of Helen's superannuation benefits to herself. Helen's husband of 32 years challenged this.

The court said it was not its role to consider the fairness or reasonableness of the exercise of the trustee. However, the result was "grotesquely unreasonable", which was evidence the daughter's exercise of her discretion was not properly exercised or was exercised in bad faith. By paying the entire proceeds of the superfund to herself, the daughter showed a lack of real and genuine consideration.

## *Lesson*

The deceased could have left a binding death benefit nomination with the papers of the SMSF, thus taking away the ability of the daughter to exercise the discretion wholly in her favour. This would have avoided the dispute and the proceedings and substantial costs being incurred.

A solicitor preparing wills has the ability to ensure that appropriate nominations are left with the SMSF documents. These issues must be considered at the time of making your will or independently if wills are already in existence.

**Smallwoods Lawyers can provide advice so that superannuation members can achieve their objectives.**

***If you need good, professional legal advice, please give Richard Smallwood a call on 9939 3446***

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