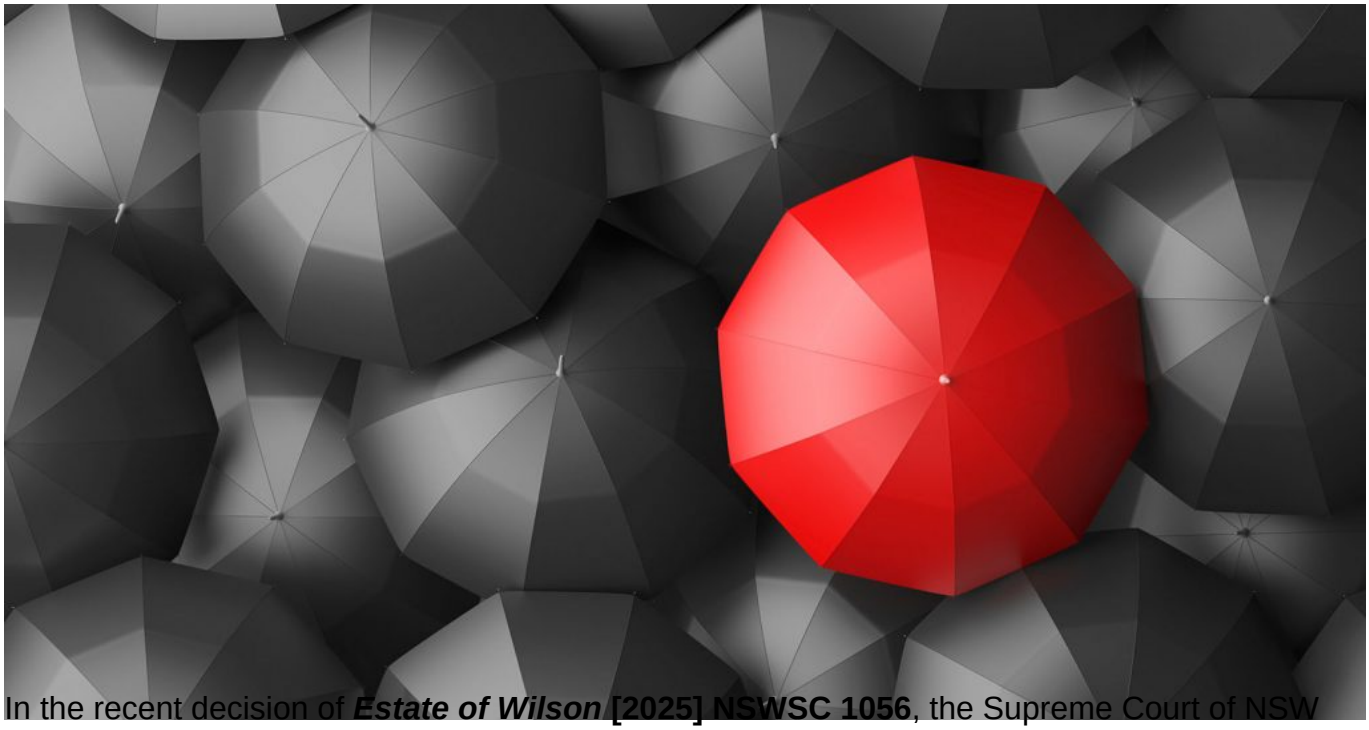
Trustee Seeking Judicial Advice Under a Family Provision Claim – Estate of Wilson [2025] NSWSC 1056

Date : November 27, 2025



In the recent decision of ***Estate of Wilson* [2025] NSWSC 1056**, the Supreme Court of NSW considered whether it should exercise its inherent jurisdiction to provide judicial advice to an independent administrator, in the context of a family provision claim. This case clarifies the Court's approach to advising administrators in circumstances where all beneficiaries are not in agreement with the proposed settlement of estate claims.

Factual Background –

In November 2020, Mr Edward Ernest Wilson died at age 86, leaving an estate estimated to be valued at $12.28 million.

Following Mr Wilson's death, Katelin Whitley was appointed the administrator of his estate. Mr Wilson was survived by four children: Raymond, Kerrie, Vicki and Donna. Approximately 18 months after letters of administration were granted to Ms Whitley, Suzanne Ford asserted that she was a biological child of the deceased and brought a family provision claim against the estate, challenging the distribution of assets.

The parties attended a mediation, and a settlement was reached on 24 July 2025 which was subject to the consent of all the beneficiaries. While Kerrie, Vicki, and Donna agreed to the settlement terms, Raymond withheld consent to the proposed orders. This prompted the administrator to seek judicial advice from the Supreme Court, regarding whether she could proceed with the settlement and execute the proposed Short Minutes of Order, which set out the anticipated orders to be made by the Court.

Law –

Under s 63(1) of the *Trustee Act 1925* (NSW) **('the Act'),** a trustee may apply to obtain "an opinion, advice or direction" from the Court in respect to the management or administration of trust property or the interpretation of the trust instrument. Broadly speaking, the purpose of this application is twofold:

1. Provides a cost-effective, summary determination of questions affecting the due administration of an estate; and

2. Provides an avenue in which a trustee may obtain protection against an allegation that he or she has acted in breach of trust.

The Decision –

The Court firstly considered whether there was a question about the management or administration of trust property under section 63 of the Act. The Court was satisfied that the application raised a valid question regarding the management and administration of the estate of the deceased. This was since there was an unresolved family provision claim at hand, and the proposed orders represented a step in finalising the matter.

Having established the jurisdictional basis for the application, the Court considered whether it should exercise its discretion to provide judicial advice. The Court noted that section 63 of the Act allows trustees (including executors and administrators) to seek judicial advice regarding the management of trust property. This can include decisions about settling disputes and administering the estate, provided they are in the best interests of the estate. Accordingly, the Court exercised its discretion to grant the judicial advice, finding that it was in the best interests of the estate to do so.

The Court also ordered that the independent administrator of the estate was justified in executing the proposed orders and that costs incurred by the administrator in seeking judicial advice be paid out of the estate on an indemnity basis.

Key Takeaways –

A trustee, as a fiduciary, owes duties to beneficiaries of the trust. For this reason, if a trustee is unsure about a particular course of action to take on behalf of beneficiaries, it should consider seeking judicial advice from the Supreme Court. This will reduce the risk of any potential claims against the trustee for breach of trust. Ultimately, this case highlights the important role that judicial advice plays in the administration of estates, particularly when navigating complex family provision claims. The Court's decision also reinforces key legal principles related to trustee duties and the wide discretion of the court under s 63 of the Act.

A copy of the decision can be accessed here.

If you would like more information or advice in relation to wills and estate planning, please

contact our Wills and Estate Planning team on (02) 9635 7966 or info@matthewsfolbigg.com.au