THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 7June 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Association for Voluntary Sterilization of South Africa v Standard Trust Limited and Others (325/2022) [2023] ZASCA 87 (7June 2023)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal with costs against the judgment of the Western Cape Division of the High Court, Cape Town (the high court), which dismissed an application for declaratory relief brought by the appellant, the Association for Voluntary Sterilization of South Africa (AVSSA).

The declaratory relief sought by the appellant involved the interpretation of a clause in a will executed by a Mr James Scratchley (the testator) on 16 May 1982 (the will). In terms of the will, he bequeathed the residue of his estate to his administrators to be held in a testamentary trust, the James Sivewright Scratchley Testamentary Trust (the trust). The first respondent, Standard Trust Limited, was the sole trustee of the trust. In accordance with the testator's wishes, a committee was established comprising the Chairman of AVSSA, the Professor of Gynaecology of the Medical Faculty at the University of Cape Town (UCT), the Medical Officer of Health, Cape Town and the Dean of the Medical Faculty at UCT (the committee). The second and third respondents, Professor Matjila NO and Associate Professor Green-Thompson NO of UCT, along with the fourth respondent, Mr Edward Haynes-Smart of AVSSA, made up the committee at the time of the case. AVSSA was a beneficiary of the trust. There was disagreement amongst the members of the committee regarding the meaning of the word 'planning' in the phrase 'Family Limitation and Planning' in clause 4.3.2.1 of the testator's will. They were accordingly not in agreement as to who should benefit from the Trust. Before the SCA, the appellant contended that the word 'planning' in clause 4.3.2.1 of the will referred to the limiting of births, rather than the spacing and timing of births.

It was common cause that the relief sought in the appeal by AVSSA was not directed against any decision taken by the committee. Thus, the SCA directed the Registrar to notify the parties to be prepared to address the Court on the following matters: (i) would the judgment and order sought on appeal have any practical effect or result as contemplated in s 16(2)*(a)* of the Superior Courts Act 10 of 2013? (ii) whether the order to which the appellant confined itself on appeal was not irredeemably vague?

The SCA found that the high court, having examined all the relevant facts, correctly declined to grant the declaratory order sought by the appellant. Thus, the SCA found that it was not simply at large to interfere with the discretion exercised by the high court.

The SCA found further that the appellant sought to attribute to the testator's will an intention equating the use of the word 'planning' to 'limiting of births', and not family planning in the broader sense. The appellant accepted that its interpretation might have given rise to tautology. The SCA found that the sum effect of what the appellant suggested was that it should not merely interpret the will, but that it ought to put a red line through the relevant provision and substitute in its stead the words 'limiting of births'. That, the SCA found, would not have been an interpretative exercise, but a recrafting of the will.

Thus, the SCA held that, in the circumstances, the high court could not be faulted for declining to issue the declaratory order sought by the appellant.

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