

Defining Children

When drafting a Will, it is essential for the language used to be appropriate for an individual's circumstance and reflective of their situation. If an individual has stepchildren, it is crucial to be specific in the wording as to who will and *will not* inherit under the terms of a Last Will and Testament. The following Estate was brought before the Court for an interpretation "in order to determine who are residual beneficiaries".

Haslam Estate, Re (2005), 382 A.R. 199 (QB)

On February 21, 2002, Mr. Haslam ("Haslam") executed his Last Will and Testament. On January 26, 2004 he died.

Haslam had been married three times. One biological child survived from the first marriage. Two biological children, including a dependent adult ("Debbie") and a stepdaughter survived from the second marriage. Six stepchildren survived from the third marriage.

The term "children" was used in three clauses within the Will.



The first clause referenced the distribution of personal effects amongst the children fairly, equitably, and as equally as possible.

The second clause stated, "To pay or transfer the sum of \$1,000.00 to each of the following of my children for their own use absolutely ...". The clause continued to specifically name two of Haslam's three biological children (Debbie was excluded from this clause), the stepdaughter from the second marriage, five of the six stepchildren from the third marriage, and a daughter-in-law.

The third clause created a testamentary trust for Debbie, and further stated with respect to the residue, to "divide it into as many shares as I have children alive at that time and to pay or transfer an equal share to each such living child."

The question before the court was "who are residual beneficiaries"? The biological children only, or the biological children, the stepchildren and the daughter-in-law?

The court looked to Haslam's words for direction.

"When used in properly drafted legal documents the words "child" or "children" are regarded as technical words with clearly understood legal meanings. Generally these words would refer only to natural or biological offspring. In his Will, Mr. Haslam chose to define what he meant by "my children" ... in doing so he included the names of a number of individuals who are not his natural or biological children but who were, more or less, individuals with whom he had a father-like relationship. ... [This] suggests that Mr. Haslam was indeed defining the people who he considered to be his children. The fact that his definition does not accord with a strict legal definition is of no relevance. It is his intention which is relevant."

The court further stated "... the Testator defined who his children were and that definition applies throughout the Will. Accordingly the nine individuals identified ... are the children referred to ... and are therefore the residual beneficiaries entitled to share in the residue of the trust which has been created for Debbie."

This court case emphasizes the importance, especially when dealing with children from different relationships, of being specific in a Will.

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