Probate Court No. 53613

PROVINCE OF NOVA SCOTIA)
) IN THE COURT OF PROBATE
COUNTY OF HALIFAX)

IN THE MATTER OF: **The Estate of GLENDA CECELIA POWER ,** late of Halifax, in the Halifax Regional Municipality and Province of Nova Scotia

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D E C I S I O N

Cite as: Power Estate (Re), 2005 NSPB 1

HEARD: At Halifax, Nova Scotia, before Sharron M. Atton Registrar of Probate, for the County of Halifax, on July 27, 28, 29, 2005

DECISION: September 1, 2005

COUNSEL: Scott Pearson Power, Self-Represented Litigant, Claimant
B. William Piercey, Q. C., Solicitor for the Estate

The Claim:

On July 12, 2004, a claim was been filed by Scott Pearson Power, son of the deceased. The claimant is seeking $69,732.38 plus costs. The claim is comprised of the following:

Half of the mortgage payments for 116 months =		$66,124.06
Half of the Electricity for 116 months -		$ 6,179.32
Half of the Oil and Wood for 116 months -		$ 8,700.00
Meals (6 a week # $9.00) for 116 months -		$25,056.00
Transportatation (200 klms/month @ .33) for 116 months	-	$ 7,656.00
Commissions paid on the sale of the claimant's home (Tracey)	-	$ 4,099.00
Legal Fees	-	$ 134.00
Costs to Purchase Lakewood	-	$ 3,941.00
Legal Fees -	-	$ 243.00
Renovations -	-	$ 5,000.00
Depreciated value/smoke damage	-	$11,000.00
SUBTOTAL:		$138,132.38
less		
reimbursed by Glenda Power		$ 68,400.00
TOTAL:		**$69,732.38**

Background & Findings:

Glenda Cecilia Power, the deceased, resided in her home, a 3-bedroom bungalow on St. Andrew's Avenue in Halifax, Nova Scotia. She was a single mother, having raised her son, Scott Power and her daughter, Karen McInnes.

The deceased had been employed with the City of Halifax Municipal Government, now known as Halifax Regional Municipality, since 1966. As a result of being diagnosed with nerve root entrapment at the bottom of her spine, the deceased went on long-term disability in May of 1988 until the age of 65 years at which time she received a monthly pension until her death on March 6, 2004.

During the year, 1991, her son, Scott Power, now living in his own home with his wife, Dolores Power, and expecting his first child, had been assisting his mother by mowing her lawn, shoveling snow when needed, taking her garbage out, doing the vacuuming and her grocery shopping. Due to the deceased's back condition, she was unable to stand for long period of time and was often bed-ridden for days at a time. During these times, Scott Power would prepare suppers for his mother. No evidence was presented to indicate Scott Power received payment or requested payment for these services provided by him to his mother.

In a statement filed with his claim, Scott Power stated that he found it increasingly difficult to physically maintain two properties and was seeking more quality time with his immediate family.

Mr. Power testified that he and his mother discussed the possibility of his mother moving in with he and his family. Dolores Power testified that having Scott's mother live with them would "give us back our family time". Dolores Power also stated that by the deceased moving in

with them, the agreement to do so was for "our" own benefit. Patsy Hessian testified that she was told by the deceased that Dolores Power approached the deceased and had said Scott was working too hard on both houses and would she move in with them. At paragraph 16 of the sworn affidavit of Scott Power, attached to his claim, he states " That I agreed to sell my matrimonial home and purchased my current home solely to provide a home for my mother and care for her special needs". I find there is a contradiction between the statements made by Dolores Power and Scott Power.

After viewing some properties, a decision was made to purchase the property at 158 Lakewood Drive in Brookside, Nova Scotia for a purchase price of $151,000.00. The property at Lakewood Drive was purchased on April 30, 1992. The deceased sold her home first and from the proceeds of that sale, gifted her son and her daughter each $50,000.00.

From the gift of $50,000.00 Scott Power and his wife, Dolores Power, were able to cover the costs associated with purchasing this home until their house sold. Scott and Dolores Power took over the main floor of the house and the deceased resided in the downstairs, consisting of approximately 1,000 square feet. For the first year, the deceased paid $450.00 per month and $50.00 per month for the cable. After the first year, a discussion took place between the deceased and Scott and Dolores Power and the deceased began paying $600.00 a month until she moved out in November of 2001. Both Scott and Dolores Power testified that they did not claim this monthly payment from the deceased on their income tax return as they did not view this money as income. Testimony was given that Scott Power would continue to drive his mother to doctor's appointments, supply his mother with a supper meal six days a week and pick up her prescriptions and munchies. Dolores Power testified that she began doing the deceased's

banking about a year after the deceased began residing with them. She would update the deceased's bank book each month and would pay her bills as they came in. Dolores Power testified the deceased "would never hold her bills over until the end of the month. She got a bill - she had to pay it right away." When asked whether she knew there was a payout on the death benefit from the deceased's employer, Dolores Power stated she was not aware there was a payout. When Exhibit '2' - being the Statement and Election of Benefits on Normal Retirement from the Halifax Regional Municipality Pension Plan was shown to Mrs. Power, she indicated that she was not aware there was a payout. Upon review of the Spouse and Beneficiary Designation, K. Dolores Power was the witness to the document; however, Mrs. Power stated she did not remember the event. I do not find Dolores Power's evidence to be credible.

Over the next 8 years, the deceased continued to pay $600.00 a month. She also contributed $2,000.00 towards the drilling of a new well in 1998. Dolores Power testified Glenda Power contributed $200.00 towards the purchase of wood on only one occasion. Patsy Hessian testified she was told by Glenda Power that she paid $300.00 every fall towards the wood. Both Karen McIssac and Fred Bragg testified that Glenda Power had mentioned to each of them that she was paying for half the wood each year she resided with them.

Patsy Hessian, a friend of the deceased, who had know Glenda Power for approximately 50 years, testified that the deceased always referred to paying rent which covered her food, power, heat and electricity. Ms. Hessian would visit the deceased often and they would go to a movie on Saturdays. Ms. Hessian would drive the deceased to the grocery store after the movies to pick up groceries such as bread, eggs, fruit, packaged meats, juice, pop and ice cream. The deceased would then prepare her meals downstairs in her living area. Ms. Hessian testified that

the deceased seemed to enjoy the arrangement she had with her son and daughter-in-law until about a year to a year and a half before the deceased moved out. Ms. Hessian testified that Dolores Power asked the deceased for some money to fix the well. Ms. Hessian testified that Dolores was always asking Glenda Power for extra money.

Frederick Bragg, a friend of the deceased since 1969 or 1970 testified that during the time the deceased resided with her son and daughter-in-law, he would speak with the deceased on average once a month by telephone. Mr. Bragg testified that the deceased loved her two children very much and she was a good housekeeper and always spoke highly of Scott and Karen. Mr. Bragg testified that the deceased had mentioned to him that she was going to sell her house and help Scott to get a new house to help him out.

During the time the deceased resided with her son and daughter-in-law, she experienced a number of serious health problems, including cluster headaches, stomach pains and arterial blockage in her legs. The deceased also received a pace maker and during 2001 she had a kidney removed. Dolores Power testified that during the time the deceased lived with them, they had to take her to the hospital three times. Both Scott and Dolores Power testified they were becoming concerned that Glenda Power required assisted health care; however Scott Power testified that during the time his mother resided with he and his family, he did not discuss his mother's health with her family physican.

Problems seemed to arise during the last two years the deceased resided with her son and daughter-in-law. Scott Power testified that money was not the problem and that the burden was his mother living with them. However, at paragraph 8 of Scott Power's sworn affidavit he

states: " That I provided a home, heat, electricity, food, food preparation, personal hygiene, housekeeping, banking services and transportation services to my mother over this 10 year period at a great financial and personal expense to myself and my family. " I have difficulty with the credibility of Scott Power's testimony in relation to statements made in his sworn affidavit. When questioned by Mr. Piercey as to the truthfulness of the facts set out in the affidavit, Scott Power stated that he was angry at the time he prepared the affidavit and "yeah, there's probably a few things in there....yeah, that if I could rephrase it, I would".

Dolores Power testified that she discussed expenses with the deceased all the time and stated that she would complain profusely to everyone, on the costs. Dolores Power testified that the deceased did not supply any groceries or laundry supplies; however, the deceased did buy her own toilet paper.

It was the testimony of Fred Bragg, Patsy Hessian and Karen McInnes that Glenda Power had mentioned to them, after the first year of living in the house at 158 Lakewood Drive, that she was paying $600.00 a month rent which included the cable, her food, power, lights, the trips to doctors appointments, banking done by Dolores Power.

In November of 2001, Glenda Power moved out of her son's home at Lakewood Drive. In a statement attached to his claim, Scott Power states that "my mother had made a doctor appointment that day for the evening and it was Halloween night. She told my wife that I would have to take her in to the appointment at 8pm. My wife advised that on Halloween I take the boys trick or treating and she answers the door. My mother did not care. My wife advised that we were not altering the evening events and that maybe she could call my sister to take her. My sister refused and for the same reason. So, my father came and took my mother to the

appointment. The next day our dog popped on my moms' carpet while I was at work. When my mother claimed that I was taking advantage of her because she had to live in shit. (She would not pick it up herself and left in on the floor until I cam home) After 10 years of the financial hardship caused by supporting this arrangement and the physical and emotional burden that I had subjected to my family as well as the special care her condition was demanding, I could not tolerate anymore. I raised my voice to my mother and said that she was taking advantage of me."

Glenda Power moved out of the home and moved in with her daughter Karen for a couple of months until she rented an apartment in Bayers Apartments in Halifax. Glenda Power lived in this apartment until her death in March of 2004. Scott Power testified that he saw his mother on two occasions after she moved out of the home at Lakewood Drive and up until her death. Patsy Hessian testified that when Scott did visit his mother, she was very thrilled and told Ms. Hessian that "I have my son back". After the second visit by Scott, at which time he brought his two sons to visit with their grandmother, Glenda Power indicated to Ms. Hessian that she was delighted. However, there were no more visits from Scott and Glenda Power indicated to Ms. Hessian that she was deeply disappointed as she always wanted a relationship with her son.

During the time Glenda Power lived at Bayers Apartments, she was able to look after her needs. Meals on Wheels was set up for her three days a week at a cost of $5.00 per meal. Karen McIssac testified that her mother enjoyed living in the apartment. About a year after moving into her apartment, Karen arranged for her mother to have a medic alert bracelet after she had fallen. Scott Power refers to this bracelet, in his statement attached to his claim as "a dog collar around her neck for emergencies".

After Glenda Power passed away, Scott Power attended at his sister's home and was provided with a copy of the Will. In his statement, Scott Power sets out that his sister, Karen, advised him that it (the Will) was a piece of crap. Mr. Power had his son, Scott, Jr. testify that he had heard a conversation between his Aunt Karen and his father wherein his Aunt had told his father that Karen had made a promise to her mother to divide the assets equally. Scott, Jr. could not recall any other part of the conversation. Scott Power testified that he had not calculated the costs for his claim until he found out the Will had nothing for him and that his sister, Karen, would be honoring the terms of the Will.

The Issues:

Issue No. 1 Is the claim filed by Scott Power based on a contract entered into between Mr. Power and the deceased?

Issue No. 2 If the claim is not based on contract, does Mr. Power have a claim based on quantum meruit or unjust enrichment?

Issue No. 1:

The manner of proving such a claim is dealt with as set out in s. 45 of the Nova Scotia Evidence Act. It provides:

> S. 45 Competency and Compellability at trial
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> On the trial of any action, matter or proceeding in any court, the parties thereto, and the persons in whose behalf any such action, matter or proceeding is brought or instituted, or opposed, or defended, and the husbands and wives of such parties and persons, shall, except as hereinafter provided, be competent and compellable to give evidence,

> according to the practice of the court, on behalf of either or any of the parties to the action, matter or proceeding, provided that in any action or proceeding in any court, by or against the heirs, executors, administrators or assigns of a deceased person, an opposite or interested party to the action shall not obtain a verdict, judgment, award or decision therein on his own testimony, or that of his wife, or of both of them, with respect to any dealing, transaction or agreement with the deceased, or with respect to any act, statement, acknowledgement or admission of the deceased, unless such testimony is corroborated by other material evidence.R.S., c.154, s.45.

In this case both Mr. And Mrs. Power gave evidence as to what the alleged agreement was between the deceased and Scott Power. After the first year living at Lakewood Drive, Scott Power testified that all bills were put on the table and Scott and Dolores and the deceased had a conversation and determined the deceased would pay $500.00 plus $270.00 per month to have additional costs covered. The deceased also paid $50.00 a month for the cable while Scott Power paid the insurance on the deceased's furnishings.

Dolores Power testified that the agreement was that the deceased would cover all costs associated with the purchase of the home at Lakewood Drive. She also testified that the $50,000.00 given to Scott Power by the deceased at the time she sold her home, was not part of the contractual agreement.

Patsy Hessian testified that the deceased indicated to her that Dolores Power had approached her to live with them. Before moving into Lakewood Drive, Ms. Hessian asked the deceased how much rent are you going to pay and the deceased replied "just a small amount". Shortly after the deceased moved in, the deceased had mentioned to Ms. Hessian that she was paying around $450.00 a month rent and $50.00 a month for the cable. Ms. Hessian understood

from the deceased that she also contributed $300.00 towards the wood for the wood furnace, every fall. Ms. Hessian understood from the deceased that she was paying rent for her space and she would be receiving 6 suppers a week and the rent included services such as taking the deceased to her doctor's appointments, picking up her prescriptions and that the power was included in the rent.

Karen McIssac, the personal representative of the estate, and the daughter of the deceased testified that she first became aware that her mother was moving in with Scott and Dolores Power when her mother told her. Ms. McIssac testified that she was told by her mother that Scott and Dolores Power had invited her to move in with them. When the deceased first moved in the Lakewood Drive property, she told her daughter that she was not crazy about living out of the city as the deceased did not own a car and did not drive; also she was partially disabled and would have to rely on Scott and Dolores Power to do all of her errands. About six months after the deceased moved in, Karen understood from her mother that she was to pay about $450.00 a month for rent which included her meals (6 meals a week), taking her to her doctors' appointments, picking up her prescriptions and doing her banking. The deceased never mentioned to her daughter that she would have to pay for the power or for the costs associated with the sale of Scott and Dolores Power's house and purchase of the Lakewood Drive property. Mrs. McIssac also indicated that never did her mother state to her that she would be responsible for half of the mortgage payments.

When questioned by Mr. Piercey, as to when Scott Power sat down and calculated what

his mother owed him in preparing the claim, Mr. Power stated that it was after he received a copy of the Will and his $1.00 and that there was no other provision for him in the Will. Mr. Power testified that he believed the estate to be worth between $60,000 and $70,000 and that if he had received half of the estate, he was prepared to incur a substantial loss on his claim. When questioned as to why Mr. Power did not deduct the $30,000.00 he received from his mother's pension, after her death, Mr. Power testified that he overlooked it.

In my view, the direct evidence of Mr. and Mrs. Power does not prove the claim filed in this estate is based on a contract. The deceased agreed to live with her son and daughter-in-law with the understanding that she contributed $50,000.00 to her son in order for him to purchase the property on Lakewood Drive and she believed that she was to pay a monthly rent, after the first year of moving in, of $600.00 per month which included six suppers a week, taking her to her doctors' appointments, picking up her prescriptions and doing her banking. She contributed $50.00 a month towards the cable for the entire household and she also contributed $300.00 a year towards the wood supply for the wood furnace. The deceased also wrote a cheque to her son in March of 1998 for $2,000.00 (Exhibit 1) to assist him in having a new well installed.

As stated earlier in this decision, Dolores Power stated that the deceased would never hold her bills over until the end of the month and that she had to pay it right away; therefore, in my view, the deceased was not aware that she was responsible for half of the living costs over a ten year period; nor was she aware she was responsible for the cost of Scott and Dolores Power selling their home and purchasing the property on Lakewood Drive as the deceased paid all of

her own costs in selling her property and she also contributed $1,000.00 as a down payment on the purchase of the Lakewood Drive property. From the $50,000.00 given to Scott Power by his mother, $5,000.00 of that money was used to make renovations to the downstairs area where the deceased resided before moving out in 2001.

Issue No. 2:

As an alternative to the claimant's claim on a contract basis, the estate has suggested that the court determine if the claim is based on quantum meruit or unjust enrichment.

Mr. Piercey referred this court to the case of **Taylor Estate v. Stiles [2004]NSJ No. 246, Tidman, J.** and in particular paragraph 56 where the requirements for a successful quantum meruit are set out from a P.E.I. case, Currie v. Shields Estate, [1993] P.E.I.J. No. 128., paragraph 21 decided by DesRoches, J., viz:

1. Proof of a contract expressed or implied between the claimant and the deceased;
2. Proof of services provided by the claimant;
3. Proof the deceased had requested the services or had accepted them in a way that a promise to pay might be inferred.

Tidman, J. States: "A successful quantum meruit claim has as its foundation a contractual basis akin to a resulting trust while unjust enrichment is a wholly equitable claim, akin to a constructive trust, relying on the principle that a person should not gratuitously benefit from the labour of another.."

The doctrine of quantum meruit as it applies to claims against estates is well set forth in the case of Walker v. Boughner (1889), 18 O.R. 448, Armour, C.J. at page 457:

The rule, however, seems to be that where a party renders services to another in the

expectation of a legacy and in sole reliance on the testator's generosity, without any contract express or implied that compensation shall be provided for him by the Will, and the party for whom such services are rendered dies without making such provisions, no action lies; but where, from the circumstances of the case it is manifest that it was understood by both parties that compensation should be made by Will and none is made, an action lies to recover the value of such services.

There is no question that the deceased and Scott and Dolores Power entered into an agreement for the deceased to live with Scott and Dolores Power. The basis of the agreement was, in my view, that the deceased made a gift to her son of $50,000.00 towards the purchase of the home on Lakewood Drive. She also made the initial deposit of $1,000.00 towards the purchase. An initial arrangement for the first year was that the deceased would pay rent of $450.00 a month and $50.00 towards the cable bill. The rent included the services provided to the deceased by her son and daughter-in-law. After the first year, when the three sat down to discuss the costs, the deceased then began paying $600.00 a month for rent which included the services initially agreed to until she left the home in 2001. As indicated earlier in this decision, Glenda Power was a woman who wanted her bills paid right away.

In my view there existed no contract, either express or implied, between the deceased and Scott Power that compensation for services rendered by Scott Power and Dolores Power was to be paid for by the deceased by a legacy. Mr. Power testified that once he learned that he was not receiving half of the estate of his mother, he decided to place a claim against the estate.

Clyde Paul, the solicitor who prepared three Wills for Glenda Power testified that he prepared the first Will for her in 2002. At that time, Glenda Power had moved out of the home on Lakewood Drive and was living in an apartment in Bayers Apartments in Halifax. Under the first Will, Karen McIssac was the executrix and was to receive the residue and Scott was to

receive the sum of $1.00. When questioned by Mr. Paul as to why Mrs. Power was writing her Will this way, she replied because her son put her out of the house.

Following the death of Scott Power's father, Scott re-established contact with his mother. Glenda Power had Mr. Paul prepare a second Will leaving Scott Power 1/3 of the residue of the estate and if he should pre-deceased her, then his share was to go to Scott Power's children.

Approximately a month later, Glenda Power met with Mr. Paul and wanted a third Will prepared. When questioned as to why she was changing the Will, Mrs. Power stated "I made a big mistake" Mr. Paul explained to Mrs. Power that because she was leaving only $1.00 to Scott, he wanted her to sign an acknowledgement that she had been advised by Mr. Paul that a dependent may make a claim under the Testator's Family Maintenance Act. Mr. Paul testified Glenda Power expressed to him that she understood the acknowledgment and she did sign this document which was filed with the original Will.

The claim of quantum meruit by Scott Power is dismissed.

Unjust Enrichment:

Referring to Taylor Estate v. Stiles, Justice Tidman cites: Bolliver v. Hirtle Estate, [1990] N.S.J. No. 179, Hallett, J.A., of the then Nova Scotia Supreme Court - Appeal Division set out with approval the test for unjust enrichment used by courts in previous cases, viz:

1. An enrichment;
2. A corresponding deprivation;
3. The absence of any juristic reason for the enrichment.

In this case I do not find that Scott Power was deprived. Glenda Power received an enrichment by living with her son, and in paying rent and contributing to the wood and assisting

her son with the payment towards the well, she received 6 meals a week, transportation to her medical appointments, the cleaning up of her living area on occasion and the banking assistance by her daughter-in-law. Scott Power was also enriched by receiving a monthly rent and a gift of $50,000.00 from his mother and financial support towards the buying of wood and the gift of $2,000.00 towards the well.

If the court were to conclude that there was an equitable obligation on Glenda Power to pay Scott Power for his services, she, in fact, did pay him.

It is not for the court to precisely measure the value of the consideration flowing one to the other. In this case, as in the case before Justice Tidman, it is sufficient to say there was a juristic reason for Glenda Power's enrichment. Thus the enrichment was not unjust.

I dismiss Scott Power's claim for unjust enrichment.

Costs:

Scott Power submitted a bill of costs in the amount of $102.28. Mr. Piercey submitted his written brief on the issue of costs.

After taking into consideration all of the testimony and supporting documents filed in relation to the claim filed by Scott Power, I have dismissed Scott Power's claim in its entirety.

In determining whether costs should be awarded on a party and party basis or on a solicitor client basis, I appreciate the case law set out in Mr. Piercey's submission and in particular, reference to **Balders Estate v. Nova Scotia (Registrar of Probate, County of Halifax** (1999), 181 N.S.R. (2d) 201 (S.C.). In ths case the appellants sought solicitor and client costs from the provincial government, maintaining that the government's conduct forced the applicants through useless and expensive litigation.

In paragraph 19 of his decision, LeBlanc J., referring to Saunders J.'s decision as to the exceptional circumstances required to justify an award of costs on a solicitor and client basis, quoted from page 206 of the decision in **Balders Estate**, supra as follows:

"It is useful to recall the decision in Young v. Young (1993) 108 D.L.R. (4th) 193, wherein Justice McLaughlin, for the majority, speaking to the matter of solicitor/client costs which were in fact awarded, on a limited basis, in that case said, at p. 283:

> "...Solicitor-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of the one of the parties. Accordingly, the fact that an application has little merit is no basis for awarding solicitor-client costs;..."
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> The limited grounds on which solicitor/client costs can properly be entertained are clearly established. In McDonnell v. M & M Developments Ltd. Et al. (1997), 164 N.S.R. (2d) 81 at p. 97, I observed:
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> "The question then becomes whether costs ought to be awarded on a party and party or solicitor and client basis? I have studied the cases to which I was referred by counsel. It is clear from such cases as Roose, supra and Brown v. Metropolitan Authority et al. (1996), 150 N.S.R. (2d) 43; 436 A.P.R. 43 (C.A.) that in Nova Scotia it must be a 'rare and exceptional circumstance' before solicitor and client costs are awarded. In Roose, supra, solicitor and client costs were not awarded even though punitive damages were. A similar result arose in Flame Bar-B-Q Ltd. V. Hoar Estate (1979), 27 N.B.R. (2d) 271; 60 A.P.R. 271; 106 D.L.R. (3d) 438 (C.A.). It would appear from Warner v. Arsenault (1982), 53 N.S.R. (2d) 146; 138 A.P.R. 146 (C.A.) and Brown, supra, that even conduct shown to be "reprehensible" is not enough to justify an award of costs on a solicitor and client basis. From my reading of the cases in order to justify an award of solicitor and client costs there must be proof tantamount to fraud or an abuse of process. Unless or until the observations of Pace, J.A., in Warner, supra, are varied or refined I am bound to follow them."

I agree with Mr. Piercey's submission that Scott Power in advancing his claim was not just "reprehensible, scandalous or outrageous" as demonstrated by his attitude towards his mother's failure to name him as a beneficiary and in the manner in which he attacked his sister's character and her role as a personal representative, but that more importantly, there is clear evidence that Mr. Power lied under oath in verifying the accuracy of the allegations contained in

his Statement of Events and his affidavit. As stated earlier in this decision, Mr. Power when being cross-examined did admit that he was angry when he prepared his Statement of Events and Affidavit and he did admit that some of his allegations may not have been true. I agree with Mr. Piercey's statement wherein he states that both Mr. And Mrs. Power were a party to the advancement of Mr. Power's claim which they knew from the beginning was fraudulent and they were both prepared to perjure themselves under oath to support his claim. The filing of the claim by Scott Power, in my opinion, was mean-spirited. Once he realized his mother had left him the sum of $1.00 and his sister, Karen, was going to honor the terms of the Will of their mother, Scott Power prepared, in anger, his statement of events, in which he calls his mother a 'coward' and goes on to state that "my mother was indebted to me while she lived with me, she was indebted to me on the day she abandoned me and she was indebted to me on the day she died". No where in his statement of events or affidavit; not in the breakdown of the expenditures that he is claiming, does Scott Power acknowledge the $50,000.00 received from his mother at the time he purchased the property on Lakewood Drive; he does not acknowledge receiving $1,000.00 from his mother towards the deposit on the purchase; he does not acknowledge receiving $2,000.00 towards the well; he does not acknowledge receiving $300.00 per year towards the wood. Nor, does he acknowledge receiving $30,000.00 from his mother's pension benefits upon her death.

Solicitor and client costs are awarded only in exceptional circumstances. Such exists in this case and the estate shall have its costs and disbursements on a solicitor and client basis to be

taxed.

September 1, 2005

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REGISTRAR OF PROBATE