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NATIONAL

Justice after 42 years in court marathon

Few lived to see the end of an exhausting court battle, writes Kim Arlington.

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It was *Bleak House* played out in the NSW Supreme Court, with an inheritance dispute that dragged on for so long, many potential beneficiaries never lived to see it resolved.

Grant MacDonald is one of the few still standing.



Victory ... Grant MacDonald outside the NSW Supreme Court. "It was a story that had to be told. And nobody else could tell it." WOLTER PEETERS

After fighting a three-year court case while also battling cancer, the pensioner finally secured a share of his great aunt's estate - 42 years after she died.

Like the Dickens novel, which unfolds against the backdrop of the notoriously drawn-out inheritance case of Jarndyce and Jarndyce, the Supreme Court matter of MacDonald v the NSW Public Trustee had its share of mystery.

Doubts were cast over the marriage of a good Catholic couple in 19th century Ireland. Money from a widow's estate disappeared in "sinister" circumstances. Her relatives were stonewalled for decades by what a judge described as "blind bureaucratic management".

It was all exposed by Mr MacDonald, who argued his own case without legal assistance. Despite failing health, he was determined to find out what happened to his Aunt Tessie's estate. "It was a story that had to be told," he said. "And nobody else could tell it."

It began in 1968, with Theresa Stapleton's death. The widow left behind no children - and no will.

When citizens die intestate, the government-appointed office of the Public Trustee has a duty to distribute their estates to those with a rightful claim.

Theresa's estate was modest; her house in Lidcombe fetched \$6000 when sold by the trustee in 1970. Her brother and sister claimed an interest. But without their parents' wedding certificate, proving they were Theresa's legitimate siblings, a functionary in the trustee's Parramatta office refused to acknowledge them as beneficiaries.

Theresa, 80, was the youngest of 11 children born to Thomas Carter and Margaret Kelly. A respected Catholic couple, they were thought to have wed in the Irish county of Roscommon in 1863, before compulsory registration of marriages. An Irish genealogist enlisted by the trustee to find a record of the union died before any was found.

With no documentary evidence of the Carters' marriage, the trustee held the assets of Theresa's estate in abeyance.

It claimed that by 1990 it had transferred more than \$11,000 - the estate, plus interest - to the NSW Treasury. After Theresa's siblings died, other relatives kept agitating the matter. Mr MacDonald began inquiring about the fate of the estate in 2000. Having waited seven years for answers, he took legal action to trace the money.

The judge who heard the case, Associate Justice John McLaughlin, said a disturbing picture emerged of the estate's administration - or lack of it. And with no evidence that the money was ever transferred, or that the Treasury received it, that picture "assumed a more sinister character", he said.

"The only inferences which the court can draw from this deplorable state of affairs are, at best, that there has been total incompetence and gross negligence on the part of the (trustee) or, at worst, that there has been deliberate dishonesty and misappropriation." Associate Justice McLaughlin directed the state ombudsman and corruption watchdog be alerted to the case.

In a scathing judgment handed down on Friday, he said the trustee failed to carry out its statutory duty for more than 40 years, despite inquiries from Theresa's family, and was negligent in handling the estate's assets.

Its conduct reflected an "abandonment to blind bureaucratic management in substitution for its legal responsibility", he said.

"The renowned fictional case of *Jarndyce and Jarndyce* ... is immediately called to mind by the circumstances of the instant case, which reflects so badly upon the Public Trustee and its staff over the past 42 years," he said.

A spokeswoman for the former Public Trustee, now known as the NSW Trustee and Guardian, said genealogy research had significantly improved since the 1960s. Its dedicated genealogy unit investigates more than 200 cases each year before transferring any money to Treasury. After the trustee conceded that Mr MacDonald was entitled to a one-eighth share in Theresa's

estate, the judge ordered it pay him \$43,034, plus exemplary damages of \$50,000 for having "contemptuously disregarded" its duties.

In *Jarndyce and Jarndyce*, which became a byword for endless legal proceedings, costs eventually devoured the entire estate. In this case, the judge ordered that no money from Theresa's estate be used to pay Mr MacDonald's costs, damages or interest.

The victory came as a relief for Mr MacDonald. Suffering from secondary liver cancer, he feared he might die before he saw the case through.

"This court case was the last thing I really wanted to be able to finish," he said yesterday. "Public officials must be accountable; they must be constantly and easily scrutinised. This should never have gone on for so long."
